

AMENDMENT

SPECIMEN SECTION 457(b) DEFERRED COMPENSATION PLAN

GOVERNMENTAL EMPLOYERS

DESIGNATED ROTH CONTRIBUTIONS AND/OR IN-PLAN ROTH CONVERSIONS

ARTICLE I PREAMBLE

- 1.1 **Effective Date of Amendment.** The Employer adopts this Amendment to the Plan to add Designated Roth Contributions and/or permit In-plan Roth Conversions under Code Sections 402(e)(1) and 402A(c), as amended and added, respectively, by the Small Business Jobs Act of 2010 (“SBJA”). This Amendment is intended as good faith compliance with the requirements of Code Sections 402(e) and 402A and guidance issued thereunder, and this Amendment shall be interpreted in a manner consistent with such guidance. This Amendment is effective as of the Effective Date(s) specified in Article II, below.
- 1.2 **Supersession of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Construction.** Except as otherwise provided in this Amendment, any reference to “Section” in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.4 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (*e.g.*, if the Plan is restated onto a plan document which incorporates Designated Roth Contribution and/or In-plan Roth Conversion provisions).

ARTICLE II EMPLOYER ELECTIONS

The Employer adopts this Amendment to the Plan to permit Designated Roth Contributions and/or In-plan Roth Conversions, in accordance with the following elections:

2.1 **Designated Roth Contributions.** (*Check one.*)

☐ Designated Roth Contributions are not permitted.

☒ Participants may make Designated Roth Contributions in lieu of or in addition to pre-tax Elective Deferral Contributions effective _____

(enter a date no earlier than [date Amendment approved by the Division of Local Government Services]).

☐ N/A. The Plan already permits Designated Roth Contributions.

2.2 **In-plan Roth Conversions.** (Check one.) (Note: Employer cannot allow In-plan Roth Conversions unless it also elects to allow, or the Plan already permits, Designated Roth Contributions under Section 2.1, above.)

☒ In-plan Roth Conversions are not permitted.

☐ Participants may convert certain pre-tax amounts to Roth contributions in an “in-plan” rollover/conversion, but only if such amounts are currently distributable under the terms of the Plan, effective _____ (enter a date no earlier than [date Amendment approved by the Division of Local Government Services]).

ARTICLE III AMENDATORY PROVISIONS

3.1 **Designated Roth Contributions/In-plan Roth Conversions permitted.** The Plan’s definitions and terms shall be amended as follows to allow for Designated Roth Contributions as of the effective date entered in Section 2.1, above, and/or to allow for In-plan Roth Conversions as of the effective date entered in Section 2.2, above. Designated Roth Contributions shall be treated in the same manner as pre-tax Elective Deferral Contributions for all Plan purposes. In-plan Roth Conversions will be subject to the Plan rules related to Designated Roth Contribution accounts.

3.2 **Designated Roth Contribution.** The amount of a Participant’s Compensation that he elects to defer to the Plan (as Deferred Compensation) on an after-tax basis.

3.3 **Elective Deferral Contribution.** The amount of a Participant’s Compensation that he elects to defer to the Plan (as Deferred Compensation) on a pre-tax basis.

3.4 **Employer Contribution.** The amount (if any) that the Employer contributes to the Plan (as Deferred Compensation) that does not reduce (on a pre-tax or an after-tax basis) the Participant’s Compensation for the Plan Year.

3.5 **Designated Roth Contributions.** If elected by the Employer in Section 2.1, above, a Participant may designate that all or a portion of his/her elective contributions to the Plan be treated as after-tax Roth contributions (referred to herein as “Designated Roth Contributions”). Such designation must be made before the date upon which the amounts designated would otherwise have been payable to the Participant (but for the election to defer), and such designation must be irrevocable on and after that date. Designated Roth Contributions (and the earnings thereon) shall be accounted for separately from all other contributions to the Plan (including rollovers of Roth contributions from other plans and In-plan Roth Conversions) and the earnings on those contributions. If a Participant takes a distribution of less than 100% of his Account (including an in-service distribution or an

unforeseeable emergency withdrawal), the Participant may designate whether such distribution shall be made from the Participant's pre-tax Elective Deferral Contributions or after-tax Designated Roth Contributions.

- 3.6 **In-plan Roth Conversions.** If the Plan permits Designated Roth Contributions and if the Employer so elects in Section 2.2, above, a Participant may elect to convert certain pre-tax Elective Deferral Contributions, Employer Contributions or rollover contributions to after-tax Roth contributions in an in-plan (taxable) conversion (referred to herein as "In-plan Roth Conversions"). Such conversion shall be accomplished through a direct rollover from the Participant's applicable pre-tax account to his Roth conversion account (such that there is no actual distribution from the Plan). In-plan Roth Conversions are expressly limited to amounts that are currently distributable to the Participant under both Code Section 457(d)(1)(A) and the terms of the Plan. For example, rollover contributions made on or after January 1, 2006, may be distributed at any time and, therefore, may be converted at any time. By contrast, amounts attributable to Elective Deferral Contributions and Employer Contributions (and rollover contributions made before January 1, 2006) generally cannot be distributed (and therefore cannot be converted) before the Participant has attained age 70½ or has had a Severance from Employment. If the Plan allows in-service distribution of small, inactive accounts, such amounts shall also be eligible for conversion under this section. All In-plan Roth Conversions shall be taxable to the Participant in the year of the conversion.

* * * * *

This Amendment has been executed this ____ day of _____, _____.

Name of Plan: Twp of West Orange Deferred Compensation Plan

Name of Employer: Township of West Orange

By: _____
Signature

Print Name: _____

Title: _____