

PROSPECT HEIGHTS SCHOOL DIST. 23 403(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. Restated Plan. [Basic Plan Document Preamble] The restated effective date is _____ . This Plan is an amendment and restatement of an existing 403(b) Plan adopted January 1, 2009.

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: An Employee normally works fewer than 20 hours per week if, for the 12-month period beginning on the date the Employee's employment commenced, the Employer reasonably expects the Employee to work fewer than 1,000 hours of service (as defined under section 410(a)(3)(C) of the Code) in such period, and, for each Plan Year ending after the close of that 12-month period, the Employee has worked fewer than 1,000 hours of service in the preceding 12-month period. Under this provision, an Employee who works 1,000 or more hours of service in the 12-month period beginning on the date the Employee's employment commenced or in a Plan Year ending after the close of that 12-month period shall then be eligible to participate in the Plan. Once an Employee becomes eligible to have Elective Deferrals made on his or her behalf under the Plan under this standard, the Employee cannot be excluded from eligibility to have Elective Deferrals made on his or her behalf in any later year under this standard. 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:

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. Effective 1/1/2020, the plan will no longer suspend elective contributions following a hardship withdrawal. 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 a duly authorized representative, hereby adopts the Prospect Heights School Dist. 23 403(b) Retirement Plan, subject to the terms of the Prospect Heights School Dist. 23 403(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]:

Prospect Heights School Dist. 23

Signature of Authorized District Officer

Print Name and Title of Officer

Date: _____, 2021