

SILVER LAKE WATER DISTRICT
SNOHOMISH COUNTY, WASHINGTON
RESOLUTION NO. 463

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SILVER LAKE WATER DISTRICT, SNOHOMISH COUNTY, WASHINGTON, ADOPTING A PLAN OF DEFERRED COMPENSATION

WHEREAS, the Silver Lake Water District is a special purpose municipal corporation organized under the laws of the State of Washington; and

WHEREAS, pursuant to RCW 41.04.250, the State of Washington authorizes the District to adopt plans allowing payroll deductions from all official employees income; and

WHEREAS, section 457 of the Internal Revenue Code authorizes, in accordance with its terms, plans providing for deferral of income; and

WHEREAS, the Board of Commissioners finds that it is in the best interests of officials and employees of the District to be able to participate in a deferred compensation plan.

NOW, THEREFORE, it is hereby resolved by the Commissioners of the Silver Lake Water District that the plan document entitled "Deferred Compensation Plan Document" attached hereto and marked Exhibit "A" is hereby adopted as the District's Plan of Deferred Compensation.

ADOPTED by the Board of Commissioners at a regular meeting of the Silver Lake Water District, Snohomish County, Washington this _____ day of March, 1996.



President and Commissioner



Secretary and Commissioner



Commissioner

I CERTIFY the above to be a true and correct copy of Resolution No. _____ adopted by the Board of Commissioners of the Silver Lake Water District this _____ day of March, 1996 as said Resolution appears in the records of the Silver Lake Water District.



Secretary of the Silver Lake Water District

Deferred Compensation Plan Document

PLAN ESTABLISHED

Plan Established. In accordance with the provisions of Section 457 of the Internal Revenue Code, Silver Lake Water District hereby establishes the deferred compensation plan for its employees, hereinafter referred to as the "plan." Nothing contained in this plan shall be deemed to constitute an employment agreement between the participant and the employer and nothing contained herein shall be deemed to give a participant any right to be retained in the employ of the employer.

DEFINITIONS

Employer. "Employer" means Silver Lake Water District.

Compensation. "Compensation" means all payments made to an employee by the employer as remuneration for services rendered.

Deferred compensation. "Deferred compensation" means the amount of the participant's compensation which the participant and the employer shall mutually agree (prior to the date on which such compensation is earned) will be deferred.

Accumulated deferrals. "Accumulated deferrals" means compensation deferred under the plan, adjusted until date of payment by income received, increases or decreases in investment value, fees, and any prior distributions made.

Participation agreement. "Participation agreement" means the agreement executed and filed by an eligible employee with the employer in which the eligible employee elects to become a participant in the plan.

Separation from service. "Separation (or separates) from service" means "separation from service" as that term is interpreted for purposes of Section 402 (e)(4)(A)(iii) of the Internal Revenue Code and refers to the severance of the participant's employment with the employer. A participant will be deemed to have severed his or her employment as of the date of his or her last payroll.

Participant. "Participant" means any eligible employee of the employer who executes a participation agreement assenting to the provisions of this plan.

Beneficiary. "Beneficiary" means a beneficiary of a participant, a participant's estate, or any other person or entity whose interest in the plan is derived from the participant.

Eligible employee. "Eligible employee" means any person who is employed by and receives any type of compensation from the employer for whom services are rendered, and who is a full-time, permanent part-time working half-time, or more, or career seasonal employee of the employer, whether or not covered by civil service; an elected or appointed official of the Silver Lake Water District.

ADMINISTRATION

Administered by committee. This plan shall be administered by the committee which shall represent the employer in all matters concerning the administration of this plan.

Committee to adopt rules and regulations. The committee shall have full power and authority to adopt rules and regulations for the administration of the plan, and to interpret, alter, amend, or revoke any rules and regulations so adopted.

Committee action fair and reasonable. Every action taken by the committee shall be presumed to be fair and reasonable exercise of the authority vested in or the duties imposed upon it. The committee and its individual members shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence.

Committee to maintain records of accounts. To facilitate an orderly administration of the plan, the committee shall maintain or cause to be maintained a deferred compensation ledger account with respect to each participant.

PARTICIPATION IN THE PLAN

Enrollment.

- (1) An eligible employee may become a participant by executing a participation agreement. Compensation will be deferred for any calendar month only if a participation agreement providing for such deferral is executed by the participant before the beginning of such month.
- (2) In signing the participation agreement, the participant elects to participate in this plan and consents to the employer deferring the amount specified in the participation agreement from the participant's gross compensation for each pay period. The amount specified must equal at least twenty five dollars per month and shall continue until changed or revoked.

Plan to plan transfers.

- (1) Transfers to the plan. If a participant was formerly a participant in a deferred compensation plan, (within the meaning of Section 457 of the code and the regulations thereunder), then the plan shall accept assets representing the value of such interest. Such amount shall be held, accounted for, administered, and otherwise treated in the same manner as compensation deferred by the participant under the plan except that:
 - (a) Only the amount, if any, transferred to the plan which was deferred under the transferor plan in the taxable year when transfer occurs shall be treated as compensation deferred under the plan in such year.
 - (b) Such amount shall remain subject to, and shall be administered in accordance with, any irrevocable elections made under the transferor plan with respect to such amount.
- (2) Transfers from the plan. The only rollovers or transfers allowable under Section 457 of the Internal Revenue Code are from one eligible Section 457 plan to another eligible Section 457 plan.

If a participant accepts employment with an employer who offers an eligible Section 457 plan, and the participant becomes a participant in that plan, then accumulated deferrals may, at the election of the participant and after written notice, be transferred to the other plan, provided that plan provides for the acceptance of such transfers.

- (3) Application for transfer. If the conditions in subsections (1) and (2) of this section are met and the participant wishes to transfer his/her account, he/she shall complete any application form and/or other documents as may be required by the plan.

Deferral limitation.

- (1) Except as provided in relating to catch-up rules, the maximum that may be deferred under the plan for any taxable year of a participant shall not exceed the lesser of \$7,500 (seven thousand five hundred dollars) or 33 1/3% (thirty-three and one-third percent) of the participant's includible compensation, each reduced:
 - (a) By any amount excludable from the participant's gross income for that taxable year under Section 403(b) of the Internal Revenue Code; and

- (b) By any amount:
 - (i) Excluded from gross income under Section 402 (a)(8) or 402 (h)(1)(B) of the Internal Revenue Code (relating to a participant's elective deferrals to simplified employee pensions) for that taxable year;
 - (ii) For which a deduction is allowable for that taxable year by reason of a contribution to an organization described in Section 501 (c)(18) of the Internal Revenue Code (relating to pension trusts created before June 25, 1959, forming part of a plan for payment of benefits under a pension plan funded only by contributions of employees); or
 - (iii) Which is deferred by a participant under Section 401(k) of the Internal Revenue Code (relating to qualified cash or deferred arrangement) during that taxable year; and
 - (c) By any amount the participant contributes to any other Section 457 of the Internal Revenue Code plan (relating to deferred compensation plan(s)) during the taxable year.
- (2) "Includible compensation" for purposes of this section means includible compensation as defined in Section 457 (e)(5) of the Internal Revenue Code and as further defined by Treasury Department Regulation 1.457-2 (e)(2) interpreting that section, and is determined without regard to community property laws. Includible compensation for a taxable year includes only compensation from the employer that is attributable to services performed for the employer and that is includible in the participant's gross income for the taxable year for federal income tax purposes. Accordingly, a participant's includible compensation for a taxable year does not include an amount payable by the employer that is excludable from the employee's gross income under:
- (a) Section 457 of the Internal Revenue Code;
 - (b) Section 403(b) of the Internal Revenue Code (relating to annuity contracts purchased by Section 501 (c)(3) of the Internal Revenue Code organizations or public schools);
 - (c) Section 105(d) of the Internal Revenue Code (relating to wage continuation plans);
 - (d) Section 911 of the Internal Revenue Code (relating to citizens or residents of the United States living abroad);

- (e) Section 402 (a)(8) or 402 (h)(1)(B) of the Internal Revenue Code (relating to simplified employee pensions);
 - (f) Section 501 (c)(18) of the Internal Revenue Code (relating to certain pension trusts); or
 - (g) Section 401(k) of the Internal Revenue Code (relating to qualified cash or deferred arrangements).
- (3) In computing includible compensation, total gross compensation as shown on earnings statements must be reduced by:
- (a) Section 414(h) of the Internal Revenue Code, before tax contributions to retirement plans; and
 - (b) Any Section 125 of the Internal Revenue Code contributions to cafeteria plans (including those which included such items as dependent care salary reduction plans) before excluding the items listed in subsection (2)(a) through (g) of this section.

Catch-up provision. For one or more of the participant's last three taxable years ending before attaining normal retirement age under the plan, the maximum deferral shall be the following:

- (1) \$15,000 (Fifteen thousand dollars) for the taxable year, reduced in the same manner as the \$7,500 (seven thousand five hundred dollars) limitation as mentioned on Page 3, Deferral limitation Number 1.
 - (a) Compensation deferred (if any) under the plan during the taxable years was subject to the maximum limitation.

A prior taxable year includes a taxable year in which the participant was eligible to participate in an eligible plan sponsored by another entity. In no event can the participant elect to have the catch-up provision apply more than once whether or not the full catch-up had been utilized.

"Normal retirement age" means the range of ages:

Ending not later than age seventy and one-half; and

Beginning not earlier than the earliest age at which the participant has the right to retire under a state authorized pension for which the participant is eligible without consent of the state and under which the participant will receive immediate retirement benefits without actuarial adjustment due to retirement prior to some later specified age in a state authorized pension plan.

This catch-up provision may not be used in the year in which the participant attains age seventy and one-half, and may not be used in any year thereafter.

Modification of deferral or investment option(s). A participant may change his/her deferral or investment option(s) not more than _____ times in any calendar year. Changes in the amount of deferral must equal at least ten dollars or more per month. (Beneficiaries entitled to receive accumulated deferrals may also change investment options not more than _____ times a year.)

An increase (or an increase and a change in investment option(s) which are effective the same date) shall not be counted as a change. Only a decrease in the amount of deferral, a transfer, or a change in investment option(s) not accompanied by an increase, shall be counted as a change.

Any combination of a decrease, a transfer, or a change in investment option(s) effective the same date, shall be considered one change.

A change (whether counted as such or not) shall be effective for any calendar month only if the participant signs a new participation agreement before the beginning of that calendar month.

All participation agreements indicating changes in investment option(s) must be filed with the employer no later than fifteen days prior to the established pay date for which the change will occur. The employer reserves the right to defer the effective date of any change.

During the payout process, the employer may periodically liquidate mutual fund shares in amounts necessary to meet distribution requirements.

Suspension and reinstatement of deferrals.

SUSPENSION. A participant may at any time direct that deferrals under the participant's participation agreement cease by completing the proper form and filing it with the employer no later than the last day of the payroll period prior to the payroll period during which the deferrals are to cease.

REINSTATEMENT. A participant who has directed the cessation of deferrals may resume deferrals for any calendar month commencing no sooner than six months after such deferrals ceased by executing a new participation agreement to defer compensation.

Investment options. Each participant shall designate on his/her participation agreement the investment option(s) in which he/she wishes to have funds invested. The investment option(s) shall be selected from those options made available for this purpose from time to time by the employer, in its sole discretion.

The employer may make available as options for investment:

- (1) A fixed rate investment utilizing fixed annuities;
- (2) Specified mutual fund shares, shares of an investment company, or variable annuities.

Nothing in this section shall require the employer to invest any amount in the investments selected and whether or not the employer so invests, no participant shall have any right, title, or interest in the amounts deferred or assets so invested.

Designation of beneficiaries. Each participant shall have the right to designate a beneficiary or beneficiaries to receive accumulated deferrals in the event of the participant's death. If no such designation is in effect on a participant's death, the beneficiary shall be the surviving spouse. If there be no such surviving spouse, then the beneficiary shall be the participant's estate. A participant may change his/her beneficiary designation at any time by filing a change of beneficiary form. A participant may also change his/her beneficiary designation by completing the beneficiary designation portion of a participation agreement form.

The participant may name:

- (1) A designated organization or person (including without limitation his/her unborn or later adopted children). If unborn or later adopted children are to be included, the designation must so indicate. The date of birth must be furnished for any living person who is named and who is under the age of eighteen.
- (2) His or her estate;
- (3) A trust which is in existence, or which is to be established under the participant's last will. For an existing trust, the participant must provide the name of the trust and the date it was established.

The participant may name contingent beneficiaries in addition to primary beneficiaries.

Distribution to participant after separation from service. After separation from service, accumulated deferrals shall be paid to the participant in one or more installments as elected by the participant.

Distribution in event of death of participant. Should the participant die at any time, whether before or after separation from service, accumulated deferrals shall be paid to the beneficiary or beneficiaries designated by the participant. The accumulated deferrals shall be paid out as provided in Section 457. If no beneficiary is designated as provided in the

participation agreement, or if the designated beneficiary does not survive by a period of thirty days, then a lump sum or series of payments shall be paid to the surviving spouse, or if none, a lump sum shall be paid to the estate of the participant.

Distribution in event of death of beneficiary. In the event a beneficiary survives the participant by thirty days and becomes entitled to receive accumulated deferrals, accumulated deferrals shall become payable to the beneficiary's estate on the twenty-fifth day of the second month following the beneficiary's death, unless benefits are paid in the form of an annuity, in which case the disposition of the remaining amount shall be determined by the annuity contract.

Elections regarding distribution. Each participant (or in the event of death, each beneficiary other than an organization, an estate, or a trust) shall elect when his/her payout will begin and the payout period.

- (1) **Election regarding time of payment.** The election regarding the time when payment will begin shall be made when a participant separates from service (or dies having separated from service and having previously elected when payment will begin). Once made, the election regarding when payout will begin is irrevocable as to the participant or beneficiary making the election.

The election regarding when payment will begin:

- (a) **By a participant who separates from service other than by reason of death,** must be made not later than sixty days after separation from service.
 - (b) **By a beneficiary, other than an organization, estate or trust, where the participant was not already receiving payments,** must be made not later than sixty days after the participant's death.
- (2) **Election regarding method of payment.** The participant (beneficiary) who makes an election regarding the date payment will begin, may also elect the period over which payments will be made. The payout period election may be made either at the time he/she elects a beginning date for payout or at any time not later than sixty days prior to the date payout is to begin. Once having made this election, the participant (or beneficiary, other than an organization, estate, or trust) may change the payout period election not later than sixty days prior to the date payout is to begin.

Such a beneficiary may also make this election where the participant was already receiving payments but must receive distribution at least as rapidly as it was being distributed to the participant. Such a beneficiary must make the payout period election not later than sixty days after the death of the participant and payout will

be suspended following the participant's death until the beneficiary either makes a payout period election or begins receiving payment as provided in subsection (4) of this section. Provided, if the participant was receiving payout in the form of an annuity contract, then the successor's right shall be limited by the terms of that contract.

- (3) **How elections are made.** A participant or beneficiary makes elections allowed under this section by completing and filing applicable payment request forms with the employer.
- (4) **Consequences in absence of a timely election regarding time of payment.** Absent a timely election regarding when payout is to begin, payout will begin on the month following the month in which the election period ends, and will be made, in a lump sum if the accumulated deferrals as of the end of the election period are less than twenty-five thousand dollars or, if the accumulated deferrals are twenty-five thousand dollars or more, in equal monthly installments over a period of one hundred twenty months or such lesser period:
 - (a) As may be necessary under the minimum payout requirements of Section 457 (d)(2)(B)(i)(I) of the Internal Revenue Code, requiring amounts to be paid not later than as determined under Section 401 (a)(9)(G) of the Internal Revenue Code; or
 - (b) As may be necessary under Section 457 (d)(2)(B)(i)(II) of the Internal Revenue Code, requiring amounts not distributed to the participant during his/her life to be distributed at least as rapidly as they were being distributed as of the participant's death.
- (5) **Consequences in absence of a timely election regarding method of payment.** In the absence of a timely election regarding the period of time over which payment will be made, payment will be made in the manner described in subsection (4) of this section.

Distribution of deferrals.

- (1) **General rule.** Assuming a timely election is allowed and has been made, payment will be made in at least annual, substantially nonincreasing amounts. Payments are also subject to the limitations in subsections (2) through (5) of this section.
- (2) **Distribution to participant.** A participant must either:
 - (a) Receive his/her entire interest prior to the latest of:

- (i) The April 1st immediately following the close of the plan year in which the participant attains age seventy and one-half; or
 - (ii) The April 1st immediately following the close of the plan year in which the participant separates from service with the employer; or
- (b) Begin receiving his/her interest not later than the time specified in (a) of this subsection and receive it over a period not longer than either:
- (i) The life of the participant;
 - (ii) The life of the participant and a beneficiary designated by the participant;
 - (iii) The life expectancy of the participant; or
 - (iv) The life expectancy of the participant and a designated beneficiary.

Payment must be sufficiently rapid to satisfy the requirements of Section 457(d)(2)(B)(i)(I) and Section 401 (a)(9)(G) of the Internal Revenue Code. Provided, that until tables are issued by the Secretary of the Treasury, if provision is made for the payment of a portion of the benefits to a beneficiary, the amount payable to the participant actuarially must exceed two-thirds of the maximum amount payable to the participant had no provision been made for payments to the beneficiary (determined as of the commencement of the distribution).

Once payments to a participant begin, the participant may accelerate the payment schedule only in the event of an unforeseeable emergency.

(3) Distribution to beneficiaries.

- (a) **When distribution begins prior to the participant's death**, then payout must be made at least as rapidly as it was being made to the participant. When the beneficiary is an organization, estate or trust, then payment will be payable in a lump sum no later than the second month following the participant's death.
- (b) **When distribution does not begin prior to the participant's death, and is to be made:**
 - (i) **To an organization, estate or trust**, then payment will be payable in a lump sum no later than the second month following the participant's death;

- (ii) **To a living beneficiary designated by the participant other than the participant's surviving spouse, and, by election, not to begin within one year of the participant's death, then payment must be made within five years of the participant's death;**
 - (iii) **To a living beneficiary designated by the participant other than the participant's surviving spouse, and, by election, beginning within one year of the participant's death, then payment must be made within fifteen years of the participant's death;**
 - (iv) **To the participant's surviving spouse, whether as designated beneficiary, or by default, then payment must begin prior to the April 1st immediately following the later of the close of the plan year in which the participant would have attained age seventy and one-half or, if later, the year in which the participant separated from service, and payment may be made over the lifetime of the surviving spouse or over a period not longer than the life expectancy of the surviving spouse.**
- (4) For purposes of this section, life expectancies will be computed by use of the expected return multiples in Treasury Department Regulation 1.72-9 or, if distribution is to be effected through a contract issued by an insurance company, by use of the mortality tables of such company. Where payment is being made over the joint lives of the participant and the participant's surviving spouse, the life expectancy of the participant and the participant's surviving spouse may be recalculated annually.
- (5) Notwithstanding anything in this plan to the contrary, distributions from the plan will be made in compliance with the minimum distribution rules of Section 457 (d)(2) of the Internal Revenue Code, and in compliance with Treasury Department Regulations issued under Sections 401 (a)(9) and 457 (d)(2) of the Internal Revenue Code.

UNFORESEEABLE EMERGENCY

Unforeseeable emergency. In the event of any unforeseeable emergency, a participant (or a beneficiary entitled to accumulated deferrals) may request the employer to pay out all or a portion of accumulated deferrals. If the application for payment is approved, payment will be made within sixty days following such an approval. The amount paid shall be limited strictly to that amount reasonably necessary to satisfy the emergency need.

For purposes of this plan, an unforeseeable emergency shall be severe financial hardship to the participant resulting from:

- (1) A sudden and unexpected illness or accident of the participant or of a dependent (as defined in Section 152(a) of the Internal Revenue Code) of the participant,
- (2) Loss of the participant's property due to casualty, or
- (3) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment shall not be made to the extent that such hardship is or may be relieved (a) through reimbursement or compensation by insurance or otherwise; (b) by liquidation of the participant's assets, to the extent liquidation of such assets would not itself cause severe financial hardship; or (c) by cessation of deferrals under the plan. Examples of what shall not be considered to be unforeseeable emergencies include the need to send a participant's child to college or the desire to purchase a home.

LEAVE OF ABSENCE

Leave of absence. If a participant is on an approved leave of absence from the employer, participation in this plan shall continue.

AMENDMENT OR TERMINATION OF PLAN

Termination of plan. The employer may at any time terminate this plan. Upon such termination, accumulated deferrals will be paid pursuant to Section 457. The participant's deferrals will cease.

Amendment of plan. The employer may also amend the provisions of this plan at any time: PROVIDED, HOWEVER, That no amendment shall affect the rights of participants or their beneficiaries regarding accumulated deferrals at the time of the amendment.

RELATIONSHIP TO OTHER PLANS

Retirement and Social Security not reduced. It is intended that, pursuant to Section 457 of the Internal Revenue Code, the amount of deferred compensation will not be considered as current compensation for purposes of federal income taxation. Such amounts will, however, be included as compensation in determining benefits or rights under the employer's group insurance, other retirement plans and FICA. Payments under this plan will supplement retirement and death benefits payable under the employer's group insurance and other retirement plans.

TRANSFER IN LIEU OF CASH

Assets in lieu of cash. Upon the occurrence of any event requiring the payment of accumulated deferrals under this plan, the committee may, in its sole discretion, elect to honor a request from the participant to substitute the transfer in kind and assignment of any asset which the employer has acquired, at fair market value.

NONASSIGNABILITY CLAUSE

Accumulated deferrals not assignable. It is agreed that neither the participant, not the participant's beneficiary or beneficiaries, nor any other designee, shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be nonassignable and nontransferable; and in the event of attempt to assign or transfer, the employer shall have no further liability hereunder, nor shall any unpaid accumulated deferrals be subject to attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy, insolvency, except to the extent otherwise required by law.

ASSETS

Plan assets. All amounts of compensation deferred under the plan, all property and rights to property purchased with such amounts, and all income attributable to such amounts, property or rights to property shall remain (until paid or made available to the participant or the participant's beneficiary or beneficiaries under the plan) solely the property and rights of the employer, (without being restricted to the benefits under the plan) and shall be subject only to the claims of general creditors of the employers.

EMPLOYER PARTICIPATION

Employer contributions. The employer may, pursuant to a changed or new participation agreement filed by a participant, add additional deferred compensation for services to be rendered by the employee to the employer during any calendar month, provided:

- (1) The employee has elected to have such additional compensation deferred, invested, and distributed, pursuant to this plan, prior to the calendar month in which the compensation is earned; and
- (2) Such additional deferred compensation, when added to all other deferred compensation under the plan, does not exceed the maximum deferral permitted by law.

APPLICABLE LAW

Plan to conform to federal law. This plan is intended to be an eligible deferred compensation plan within the meaning of Section 457 of the Internal Revenue Code, and Treasury Department Regulation 1.457-2(a), and shall be interpreted accordingly.