

HARDSHIP AND ELIGIBILITY AMENDMENTS TO  
THE Boonton BOE  
403(b) RETIREMENT PLAN

WHEREAS, the Boonton BOE (“Plan Sponsor”) maintains the Boonton BOE 403(b) Retirement Plan (“Plan”); and

WHEREAS, pursuant to Rev. Procs. 2013-22 and 2019-39, and IRS Notice 2018-95, the Plan Sponsor amends the plan documents in a good faith effort to meet the requirements of law, regulations or other issuances regarding eligibility requirements and hardship distributions; and

WHEREAS, this amendment is intended as a good faith effort to comply with the requirements of eligibility to participate in the Plan and hardship distribution final regulations and is to be construed in accordance with the same. Both the Amendment and the eligibility and hardship distribution final regulations will supersede any inconsistent Plan provisions;

NOW, THEREFORE, BE IT RESOLVED that the “Note” provisions set forth in the Adoption Agreement, “Employee Eligibility” is hereby restated and amended to read as follows:

*[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.]*

BE IT FURTHER RESOLVED that the “Note” provision set forth in the Adoption Agreement, “Hardship Distributions” is hereby restated and amended to read as follows:

*[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.]*

BE IT FURTHER RESOLVED that section 5.5 of the Basic Plan Document, “Hardship Withdrawals” is hereby restated and amended to read as follows:

**5.5 Hardship Withdrawals**

(a) Hardship withdrawals shall be permitted under the Plan to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship.

(b) The Individual Agreements shall provide for the exchange of information among the Employer or Employer's agent and the Service Provider(s) to the extent necessary to implement the Individual Agreements, including, in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the Participant's financial need (pursuant to Section 1.401(k)-1(d)(3)(iv)(E) of the Income Tax Regulations). In addition, in the case of a hardship withdrawal that is not automatically deemed to be

necessary to satisfy the financial need (pursuant to Section 1.401(k)-1(d)(3)(iii)(B) of the Income Tax Regulations), the Service Provider shall obtain information from the Employer or other Service Provider(s) to determine the amount of any plan loans and rollover accounts that are available to the Participant under the Plan to satisfy the financial need.

(c) Safe Harbor Contributions/QNECs/QMACs. Effective 1/1/2020, hardship distributions are permitted from Qualified Non-Elective Contributions, Qualified Matching Contributions or contributions used to satisfy the safe harbor requirements of Code sections 401(k)(12) or 401(k)(13), or 401(m)(11) or 401(m)(12), if available under the Plan and not held in a Custodial Account.

(d) Amount Necessary to Satisfy Need Requirement. Effective 1/1/2020, a distribution will be determined to satisfy an immediate and heavy financial need only if the three criteria listed below are met:

i. The distribution is not in excess of the amount required to satisfy the financial need (including any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);

ii. The Participant has obtained all other currently available distributions, other than hardship distributions, under any deferred compensation plan, whether qualified or nonqualified, maintained by the Employer; and

iii. The Participant has represented (in writing or by an electronic medium) that he has insufficient cash or other liquid assets to satisfy the financial need.

(e) Six-Month Suspension. Effective 1/1/2020, the Plan will not initiate a six-month suspension period on Elective Deferrals (and after-tax contributions) following a hardship distribution.

(f) Loan Requirement. Effective 1/1/2020, Participants are not required to take all available nontaxable loans before applying for a hardship distribution.

(g) Modification of Repair Expense. Between 1/1/18 and 2/17/19, the plan modified the safe harbor immediate and heavy financial need expense relating to damage to a principal residence (i.e., §1.401(k)-1(d)(3)(iii)(B)(6) and Basic Plan Document 5.5(g)) to include expenses for the repair of damage to the Employee's principal residence that would qualify for the casualty deduction under Code section 165. Effective 2/19/19, the plan modified the safe harbor immediate and heavy financial need expense relating to damage to a principal residence (i.e., §1.401(k)-1(d)(3)(iii)(B)(6)) to include expenses for the repair of damage to the Employee's principal residence that would qualify for the casualty deduction under Code section 165 (determined without regard to section 165(h)(5) and whether the loss exceeds 10% of adjusted gross income).

(h) New Safe Harbor Financial Need Provision. Effective 1/1/2020, the following immediate and heavy financial need will be considered as a safe harbor criteria for hardship distributions in addition to the safe harbor financial need provisions outlined in 5.5(g) of the Basic Plan Document and §1.401(k) - 1(d)(3)(iii)(B):

i. Expenses and losses (including loss of income) incurred by the Employee on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, provided that the Employee's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

BE IT FURTHER RESOLVED that the Plan, as restated and amended is hereby approved and adopted.

IN WITNESS WHEREOF, the Plan Sponsor has caused this Resolution and Amendment to be adopted this \_\_\_\_ day of \_\_\_\_\_, 2019.

Boonton BOE

By: \_\_\_\_\_