

SCHOOL DISTRICT OF BAYFIELD

**403(b) Plan
Vendor Certification and Hold Harmless Agreement**

The School District of Bayfield (the "Employer") and _____, (the "Vendor") enter into this Vendor Certification and Hold Harmless Agreement (the "Agreement") as of _____, 2008.

Background

The Employer is eligible to sponsor a plan under Section 403(b) of the Internal Revenue Code of 1986, as amended ("Code") ("403(b) Plan") and desires to make the 403(b) available its employees under the eligibility rules set out in Section 403(b) (1)(A)(ii) of the Code and applicable regulations.

The Employer has provided the Vendor with a copy of the Employer's 403(b) Plan document.

The Vendor desires to serve as an approved 403(b) Vendor for the Employer's 403(b) Plan and agrees to the following:

Vendor Certification

- 1) The Vendor certifies that it fully complies with all federal and state laws and regulations applicable to the policies or other investments offer for sale in the 403(b) Plan and will enforce all compliance rules applicable to its agents and representatives. This shall include, but is not limited to:
 - a) Assuring its agents and representatives have the proper state and federal insurance and/or securities licenses to sell the products offered by the Vendor;
 - b) Assuring the Vendor's agents and representatives comply with all applicable state and federal laws and regulations;
 - c) Assuring the policies or other investments comply with all applicable state and federal laws and regulations; and
 - d) Fully disclosing all features, benefits, limitations, and charges of any kind in the policies or other investments offered by the Vendor.
- 2) If the Vendor is offering mutual funds for sale in the 403(b) Plan, the Vendor hereby certifies that any funds offered in the 403(b) Plan are maintained under a custodial account as defined in Section 403(b)(7) of the Code and applicable regulations.
- 3) The Vendor certifies that it fully complies with all federal and state privacy laws and regulations of Employer and Participant information.

Vendor Services

In connection with the annuities or custodial accounts, the Vendor agrees to provide the Employer with sufficient information to administer the Employer's 403(b) Plan which included, but is not limited to the following services:

- 1) Calculate the maximum annual contribution permitted by law under the 403(b) Plan for employees contributing to a 403(b) Plan products offered by the Vendor, upon: (i) enrollment, (ii) non-automatic increases in deferrals, if the Vendor is notified in advance thereof, or (iii) request by the Employer or employee. This calculation shall include calculation of the limits under Code Sections 415(c), 402(g) and 414(v), as applicable to 403(b) programs. In performing the calculation, the Vendor is entitled to rely on information provided by the participant and/or the Employer.

- 2) Review salary reduction contributions for each employee directing contributions to a Vendor annuity or custodial account, at the end of each year, and notify the Employer within a reasonable time thereafter if any employee has contributed in excess of the elective deferral limit of Code Section 402(g), as applicable to 403(b) programs and as set forth in the Vendor's annuity contract or custodial account. In calculating the Code Section 402(g) limit, the Vendor is entitled to rely on information provided by the participant and/or the Employer concerning qualification for and the calculation of the elective cap expansion under Code Section 402(g)(7).
- 3) Notify participants of the minimum distribution requirements under Code Sections 403(b)(10) and 401(a)(9) and the regulations promulgated thereunder. Required minimum distributions will be calculated in a manner consistent with the methodology set forth under the Code and underlying Treasury regulations. The Vendor will be responsible for supplying all required \ distribution paperwork and will also be responsible for locating and initiating communication with missing participants.
- 4) Limit distributions to distributable events, as defined in the Employer's Plan document which comply with the applicable Code sections. The Vendor will be responsible for supplying all necessary distribution paperwork for those permissible distributions. The Vendor will also be responsible for locating and initiating communication with missing participants.
- 5) Report benefit distributions and deemed distributions on IRS Form 1099-R, and withhold Federal income taxes on distributions, as requested by the participant or the participant's beneficiary, or as required by law.
- 6) Provide employees with notice of their rights to elect a direct rollover or to receive the distribution directly, within a reasonable time and prior to making an eligible rollover distribution, consistent with Section 403(b)(8), Section 402(f) and regulations promulgated thereunder.
- 7) No loans are permitted under the terms of the Employer's 403(b) Plan. The Vendor will be responsible for any negative tax and/or tax qualification implications upon the Plan that result from the Vendor issuing a loan not permitted under the terms of the Plan. Furthermore, the Vendor will hold harmless the District from any resulting public or private action initiated by the participant, IRS, other governmental agency, including but not limited to penalties, disqualification, negative personal tax penalties against participants that may occur as a result of an impermissible loan.
- 8) If the Vendor is granting a hardship withdrawal under final regulations relevant to the hardship withdrawal rules, Vendor acknowledges that the Employer has adopted the Safe Harbor rules; thus, agrees to notify the Employer's payroll department that such a withdrawal has been taken, and that salary reduction contributions to any plan of the Employer must be suspended for a period of six months following such hardship withdrawal. Pursuant to the terms of the Employer's 403(b) Plan, the Vendor agrees to bear the responsibility for requiring certification and determining whether the request for distributions meets the hardship withdrawal eligibility rules. The Vendor is also responsible for income tax withholding and reporting for said distributions.
- 9) Furnish to employees upon request information concerning the terms and provisions of the annuity or custodial account purchased, including any distribution options available at the time of retirement or distributions other than at retirement.
- 10) Extend its full and complete cooperation in providing data to the Employer, including any and all necessary documents required in the event of an audit by the internal Revenue Service, as such data and/or documents are requested by the Employer for the sole purpose of administering the plan in conformity with requirements of the Code. The data and/or

documents provided will reflect information as identified to the Vendor by the Employer, and will be provided to the extent reasonably available from records maintained by the Vendor in the ordinary course of business. The Employer acknowledges that its release of such data or documents may be subject to applicable federal and/or state privacy limitations, and that release by the Vendor of certain information may be subject to participant consent.

- 11)** Sign Information Sharing Agreements or other documentation as requested by the Employer. In addition, the Vendor agrees to share information with other Vendors, to ensure compliance with the 403(b) regulations and the withdrawal restrictions as set forth in Sections 403(b), 402(g), 415(c) of the Code and related regulations, and to further ensure compliance with the required minimum distribution rules of Section 401(a)(9) of the code.
- 12)** Cooperate in the correction of any defects in the Employer's 403(b) program under applicable Internal Revenue Service guidance regarding correction and self-correction of applicable defects to the extent those defects relate to annuity contracts issued by or custodial accounts maintained by the Vendor. In the event that the Vendor identifies any operational defects in the ordinary course of business, the Employer hereby authorizes the Vendor to correct any such operational defects in the 403(b) program in a manner consistent with applicable guidance.
- 13)** The Vendor also agrees to cooperate in the correction of any defects in the Employer's 403(b) program which the Employer submits to the IRS or addresses under applicable self-correction or audit programs, pursuant to applicable IRS guidance for such correction to the extent those defects relate to annuity contracts issued by or custodial accounts maintained by the Vendor, provided that: (i) the Employer notifies the Vendor within a reasonable time in advance of a submission in accordance with the Employee Plans Compliance Resolutions System (EPCRS) program, and (ii) the Employer and the Vendor agree in advance as to the scope of the potential correction the Vendor will undertake, as it relates to annuity contracts or custodial accounts issued by the Vendor.
- 14)** Comply, and to direct its agents and representatives to comply, with all pertinent written directives regarding the solicitation of employees of the Employer and the purchase of annuities or custodial accounts, to the extent that such directions are consistent with applicable law and are provided to the Vendor within a reasonable time in advance of the enforcement of any such directives.
- 15)** The Vendor shall maintain errors and omissions insurance for each of its agents, or shall require each of its agents to maintain errors and omissions insurance. The Vendor shall also maintain general corporate liability and fidelity coverage and provide proof thereof to the Employer upon request. All such insurance coverage shall be maintained while this Agreement remains in effect. The Vendor shall notify the Employer in writing within thirty (30) days of a termination of such coverage which occurs while this Agreement remains in effect, where the coverage is not replaced by similar coverage from another insurer.

Hold Harmless

- 1)** The Vendor shall hold harmless and indemnify the Employer, its officers and employees from any statutory tax penalties, and/or interest on tax deficiencies or on statutory tax penalties, that may be lawfully imposed by any governmental authority by reason of: (i) the making of contributions to tax-sheltered annuity contracts or custodial accounts sold by the Vendor in excess of the limits on tax-deferred contributions imposed by the Code, if such excess contributions arise from an erroneous calculation of such contribution limits by the Vendor or a representative thereof, (ii) any challenge to the tax-qualified status of the form of any annuity contracts or custodial accounts purchased from the Vendor on behalf of employees of the Employer or (iii) ineligible or impermissible distributions made by the Vendor.

- 2) The paragraph directly above shall not apply if the event giving rise to the imposition of statutory tax penalties or interest: (i) is directly attributable to erroneous information furnished to the Vendor by the Employer or any employee thereof, or (ii) occurs after the Vendor has notified the Employer or the affected employee in writing of an error and either or both has failed or refused to take appropriate corrective action, or (iii) is directly attributable to the failure of the Employer to follow a legal requirement for the 403(b) program if the Employer had been duly notified in writing of such requirement and compliance therewith was beyond the control of the Vendor.
- 3) In the event that the Internal Revenue Service or other governmental authority notifies the Employer of any proposed action that could give rise to any claim against the Vendor under the Agreement, the Employer shall promptly notify the Vendor in writing of such proposed action. Following the Vendor's receipt of notification in writing of such proposed governmental action, the Vendor may discharge its liability under this Agreement by making appropriate payment to the Employer or affected employee at any time prior to the final disposition of the proposed governmental action, in such event, the Vendor shall not be liable for additional interest which may accrue with respect to the amount of the payment after the date thereof. If the Vendor concludes that the proposed governmental action is erroneous or unwarranted, it may request that the Employer or affected employee pursue available legal remedies to contest the proposed governmental action, in which case the Vendor shall offer to bear all reasonable fees and costs associated with the pursuit of such legal remedies.

Miscellaneous

- 1) **Termination.** The Vendor and the Employer reserve the right, upon thirty (30) days' written notice to the Employer or the Vendor, respectively, by Registered or Certified mail, to terminate this Agreement, but such termination shall in no manner affect any liability incurred under this Agreement prior to the effective date of such termination.
- 2) **Notices.** Any notice required to be given under this Agreement shall be deemed sufficient if, in writing, sent by registered or certified mail, return receipt requested, to the parties' principal office.
- 3) **Applicable Law.** Except to the extent governed by the laws of the United States, this Agreement is to be governed by and construed under the laws of the State of Wisconsin, and the venue of any actions or suits involving same shall be in the Circuit Court of Bayfield County.
- 4) **Captions And Section Headings.** Captions and section headings used herein are used for convenience only and are not a part of this Agreement and shall not be used in construing it.
- 5) **Invalid Provisions.** Should any provision of this Agreement for any reason be declared invalid, void or unenforceable by a court of competent jurisdiction, the validity and binding effect of any remaining portion shall not be affected, and the remaining portions of this Agreement shall remain in full force and effect as if this Agreement had been executed with said provision eliminated.
- 6) **Entire Agreement.** This Agreement contains the entire agreement of the parties. It supersedes any and all other agreements, either oral or in writing, between the parties hereto. This Agreement may not be modified or amended by oral agreement, but only by an agreement in writing signed by both parties.
- 7) **Authority to Sign.** The signatory to this Agreement for the Vendor represents and warrants that he/she has the authority to execute this Agreement and bind the Vendor to the terms and conditions hereof.

Agreed to on this _____ day of _____, 2008.

EMPLOYER:

VENDOR:

(Authorized Signature)

(Authorized Signature)

By: _____

By: _____

Title: _____

Title: _____

APPROVED: June 9, 2008