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Date: March 14, 2006

Legend:
County =
EIN =
Plan =

Trust =
Union A =

Union B =
Union C =

State X =
County Code =

Dear

This responds to your letter of August 31, and subsequent correspondence, requesting a ruling concerning the Plan, which the County intends to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (the Code).

The Plan is a collectively bargained plan that is codified under the County Code and was adopted by the County. It is represented that the County is a political subdivision of State X and an eligible employer within the meaning of section 457(e)(1)(A). County has established the collectively bargained Plan and will maintain the Plan for purposes of Meeting the requirements of section 457. Only County employees of Unions A, B, C, may participate in the Plan.

Under the Plan, an eligible employee becomes a participant by executing an election to defer a portion of his or her salary into the Plan and filing the election with the Administrative Committee. The Administrative Committee is comprised of members of the bargaining committee. The election becomes effective no earlier than the calendar month following the month in which the election is made.

The Plan provides for a maximum amount that may be deferred by a participant in any taxable year. It also provides for a catch-up contribution for amounts deferred for one or more of the participant's last three taxable years ending before he or she attains normal retirement age under the Plan. The normal retirement age for purposes of the catch-up provisions is any age on or after the earlier of age 62 or the earliest date at which the participant would be eligible to retire and receive a full pension benefit and may not be later than age seventy and a half. A Participant's normal retirement age must be the same as his or her normal retirement age under any other eligible deferred compensation plan established and maintained by County. A qualified firefighter or police officer as defined in section 415(b)(2)(H)(ii)(I) may designate a normal retirement age that is between the ages of forty and seventy and a half. In addition, the Plan provides for age fifty-plus catch-up contributions described in section 457(e)(18). The amounts that may be deferred under the annual maximum limitation and the catch-up provisions are within the limitations of section 457(c).

Each Participant shall direct the investment of amounts held in his or her account balance under the Plan among the Plan's investment options. Subject to the form and manner prescribed by the Plan, participants are permitted to amend their investment elections at such times and in such manner and form as prescribed by the Administrative Committee.

With certain limitations, a Participant may elect the manner in which his or her deferred amounts will be distributed. Benefits generally may be paid in the form of: (1) a lump-sum; (2) annual installments; (3) life annuity; (4) life annuity with period certain; or (5) joint and survivor annuity. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of sections 457(d) and 401(a)(9) of the Code.

The Plan also provides for a distribution due to an unforeseeable emergency that is a severe financial hardship resulting from extraordinary and unforeseeable circumstances beyond the control of the participant. Finally, the Plan provides for voluntary in-service distributions of Participant's account balance if the amount is not in excess of the dollar limit provided in section 411(a)(11) (i.e., \$5000.00 adjusted for inflation) if certain conditions are met.

The Plan provides for acceptance of transfers of a Participant's account balance from another eligible deferred compensation plan established and maintained by the same employer as provided for in section 457(e)(10). The Plan provides for acceptance of eligible rollover distributions and the establishment and maintenance of any necessary separate accounts. The Plan provides for permissive plan to plan transfers of all or a portion of a Participant's account: (1) to a defined benefit government plan in State X, if the transfer is for the purchase of permissive service credits under the defined benefit governmental plan, or (2) for a repayment to which section 415 does not apply by reason of section 415(k)(3).

The Plan provides that amounts of compensation deferred under the Plan are to be transferred to and invested in a trust as described in section 457(g)(1) for the exclusive benefit of the participants and their beneficiaries. All amounts deferred under the Plan must be transferred to the Trust within an administratively reasonable time period that is not longer than fifteen business days following the end of the month in which the amount would otherwise have been paid to the Participant. Neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments under the Plan.

County represents that the Plan complies with the requirements of Revenue Ruling 2004-57, 2004-1 C.B. 1048. Rev. Rul. 2004-57 provides that an eligible governmental employer may adopt, for its collectively-bargained employees, a plan created by the union for employees of the governmental employer and offered and administered by the union, provided that the plan is "established and maintained by" the governmental employer. The plan must treat all deferrals under all eligible plans of the employer in which an individual participates by virtue of his or her relationship with a single employer as a single plan for purposes of determining whether deferrals in excess of the section 457(b) limitations have been made. All eligible plans must have the same normal retirement age. Eligible plans must share information about the amount of annual deferrals to other eligible plans of the employer as may be needed for proper administration of the plans. The union must provide such information from an eligible governmental plan to the governmental employer as may be needed to complete tax returns for their employees and to administer other eligible plans.

The Plan has adopted several Model Amendment provisions from Rev. Proc. 2004-56, 2004-2 C.B. 376, on a word-for-word basis or in a manner that is substantially similar in all material respects.

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan as defined in section 457(b).

Section 457(a)(1)(A) of the Code provides that in the case of a participant in an eligible governmental deferred compensation plan, any amount of compensation deferred under the plan and any income attributable to the amounts so deferred shall be includible in gross income only for the taxable year in which such compensation or other income is paid to the participant or beneficiary. Section 457(b) provides that the term "eligible deferred compensation plan" means a plan established and maintained by an eligible employer in which only individuals who perform service for the employer may be participants and which meet the deferral limitations described in section 457(c); which meets the distribution requirements described in section 457(d); which provides for deferral elections described in section 457(b)(4); and, in the case of a governmental plan, which requires the plan assets and income to be held in trust for the exclusive benefit of participants and beneficiaries as described in section 457(g).

Section 457(e)(1)(A) provides that the term "eligible employer" means a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State.

Section 1.457-4(c)(3)(v)(A) of the regulations provides that a plan may define the normal retirement age for purposes of the last-three-years catch-up provision as any age that is on or after the earlier of age 65 or the age at which participants have the right to retire and receive, under the basic defined benefit pension plan of the State or tax-exempt entity (or a money purchase pension plan in which the participant also participates if the participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and that is not later than age seventy and a half. Alternatively, a plan may provide that a participant is allowed to designate a normal retirement age within these ages. For purposes of the three-year catch-up provision an entity sponsoring more than one eligible plan may not permit a participant to have more than one normal retirement age under the eligible plans it sponsors. Section 1.457-4(c)(3)(v)(B) of the regulations provides a special exception for qualified police and firefighters to retire as early as age forty for purposes of the three-year catch-up provision.

Section 1.457-5 of the regulations provides that the section 457(c) eligible deferral amount limitation is applied to all eligible plans in which a participant participates in a tax year and is determined on an aggregate basis. If a participant has annual deferrals under more than one eligible plan and the applicable catch-up amount is not the same for each such eligible plan for the taxable year, section 457(c) is applied using the catch-up amount under whichever plan has the largest catch-up amount applicable to the participant. To the extent that the combined annual deferral amount exceeds the maximum deferral limitation, the amount is treated as an excess deferral

under section 1.457-4(e) of the regulations. For purposes of determining whether there is an excess deferral resulting from a failure of a plan to apply the deferral limitations, all plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan (without regard to any differences in funding).

Section 457(d)(1)(A) of the Code provides that amounts distributed under an eligible plan will not be made available to participants or beneficiaries earlier than (i) the calendar year in which the participant attains age 70 1/2, (ii) when the participant has a severance from employment with the employer, or (iii) when the participant is faced with an unforeseeable emergency.

Section 457(d)(2) of the Code requires a plan to meet the minimum distribution requirements of section 401(a)(9). These requirements are described in Income Tax Regulation sections 1.401(a)(9)-1 through 1.401(a)(9)-9.

Section 457(e)(10) of the Code provides that a participant shall not be required to include in gross income any portion of the entire amount payable to such participant solely by reason of the transfer of such portion from one eligible deferred compensation plan to another eligible deferred compensation plan. Section 1.457-10(b)(1) of the regulations provides that an eligible government plan may transfer amounts to, and receive amounts from, another eligible government plan if certain conditions are met.

With regard to transfers from an eligible governmental plan to another eligible governmental plan of the same employer, section 1.457-10(b)(4) of the regulations provides that a transfer from an eligible governmental plan to another eligible governmental plan is permitted if the following conditions are met: (i) the transfer is from an eligible governmental plan to another eligible governmental plan of the same employer; (ii) the transferor plan provides for transfers; (iii) the receiving plan provides for the receipt of transfers; (iv) the participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and (v) the participant or beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the participant or beneficiary is performing services for the entity maintaining the receiving plan.

Section 457(e)(16) of the Code provides that, with regard to rollover distributions, for an eligible deferred compensation plan if (i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4)), (ii) the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and (iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such

distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid. Under section 1.457-10(e) of the regulations, an eligible governmental plan that permits eligible rollover distributions made from another eligible retirement plan to be paid into the eligible governmental plan is required to provide that it will separately account for any eligible rollover distributions it receives. Amounts contributed to an eligible governmental plan as eligible rollover distributions are not taken into account for purposes of the annual limit on annual deferrals by a participant but are otherwise treated in the same manner as amounts deferred under the plan. Section 1.402(c)-2(b) of the regulations provides that a distributee other than the employee or the employee's surviving spouse (or a spouse or former spouse who is an alternate payee under a qualified domestic relations order) is not permitted to roll over distributions.

Section 457(e)(17) of the Code provides that no amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan or a repayment to which section 415(k)(3) does not apply.

Section 457(g) of the Code provides that a plan maintained by an eligible governmental employer shall not be treated as an eligible deferred compensation plan unless all assets and rights purchased with such deferred compensation amounts and all income attributable to such amounts, property, or rights of the plan are held in trust for the exclusive benefit of participants and their beneficiaries. Section 457(g)(2)(A) provides that a trust described in section 457(g)(1) shall be treated as an organization exempt from tax under section 501(a).

Based upon the information submitted and the representations made, we conclude as follows:

1. The Plan is an eligible governmental plan under section 457(b) consistent with Revenue Ruling 2004-57.
2. Amounts of compensation deferred in accordance with the Plan, including any income attributable to the deferred compensation, will be includible under section 457(a)(1)(A) of the Code in the recipient's gross income for the taxable year or years in which amounts are paid to a participant or beneficiary in accordance with the terms of the Plan.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. If the Plan is significantly modified, this ruling will not necessarily remain applicable.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the plan described above. In addition, this ruling applies only to deferrals made after the date of this ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Robert D. Patchell
Branch Chief, Qualified Plans
Branch 2 (Employee Benefits)
(Tax Exempt & Government Entities)

Enclosure (1)
For 6110 purposes