

**Washoe County Deferred Compensation Plan**

Effective January 1, 2024

# Washoe County Deferred Compensation Plan

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## **ARTICLE I INTRODUCTION**

### **Section 1.1 Purpose and Nature of the Plan**

The purpose of this Plan is to provide deferred compensation to Employees of the Employer through a Code section 457(b) eligible deferred compensation plan that is maintained by a governmental employer described in Code section 414(d). The Plan is funded by Participant contributions, Rollover Contributions, Employer Contributions, if made, and the earnings thereon.

### **Section 1.2 Governmental Plan**

The Plan is sponsored by Washoe County, consistent with the applicable requirements of Code section 457(b). Administrative and amendment authority is delegated to the Committee as described herein. The assets of the Plan shall be held in a Trust that complies with the requirements of Code section 457(g).

### **Section 1.3 Definitions and Interpretation**

The capitalized words and phrases used throughout the Plan have the meanings set forth in Appendix A. The Plan is to be interpreted in accordance with the principles set forth in Article XV.

**ARTICLE II  
ELIGIBILITY AND PARTICIPATION**

**Section 2.1 Eligibility**

Each Employee shall be eligible to participate in the Plan immediately upon becoming employed by the Employer.

**Section 2.2 Commencement of Participation**

(a) **Enrollment Process.**

(1) **General Rule.** Each Employee may elect to become a Participant in the Plan at any time. Such election shall be implemented as soon as administratively practicable, but no later than the calendar month following the month in which the election is made.

(2) **Active Participant.** An Employee with an Account is referred to as an Active Participant.

(b) **Employee Investment Election.** Each Employee must select the Investment Funds in which contributions made to the Plan are to be invested as set forth in Section 5.1; provided, however, that if the Employee fails to select an Investment Fund, he will be deemed to have elected to invest his Account in the default Investment Fund selected by the Committee as provided in Section 5.1.

**Section 2.3 Cessation of Active Participation**

A Participant ceases to be an Active Participant effective as of the end of the payroll period in which the Participant has a Severance Event.

**Section 2.4 Termination of Participation**

An individual shall cease to be a Participant once he is no longer entitled to any benefits under the Plan.

**Section 2.5 Automatic Enrollment**

(a) **Automatic Enrollment for New Employees.** Notwithstanding Section 2.2(a)(1), an Employee who subject to this Section 2.5 and who has not completed an Enrollment Agreement within 30 days of receiving the notice in subsection (b) is deemed as soon as practicable thereafter to have elected to become a Participant pursuant to an Enrollment Agreement and to have his Benefitable Compensation reduced by 3% (and have that amount contributed as a pre-tax elective deferral on his behalf), at the time of such payroll period and to have agreed to be bound by all the terms and conditions of the Plan. Contributions made under this automatic enrollment provision shall be made to the Investment Fund(s) selected for this

purpose by the Board, until the Employee makes a designation of Investment Funds. Any Employee who automatically becomes a Participant under this Section 2.5 shall be subject to the Beneficiary designation rules in Sections 9.1 and 9.2.

- (b) **Notices.** Any Employee subject to this Section 2.5 will receive a notice at the time he is hired (or when he later becomes eligible) that describes the Employee's rights and obligations under this Section 2.5, including the information in this Section 2.5 and identification of how the Employee can file an election or make a designation as described in Section 2.5(c), and how the contributions under this Section 2.5 will be invested. The notice shall explain that, unless the Employee affirmatively elects otherwise, elective deferrals made in accordance with this Section shall be treated as pre-tax elective deferrals. The notice shall also explain the Employee's right to request a permissive withdrawal and the procedures to elect such a withdrawal.
- (c) **Right to Opt-Out from Automatic Enrollment.** This Section 2.5 does not apply to the extent an Employee completes an Enrollment Agreement pursuant to Section 3.1, or elects to have no Benefitable Compensation contributed as elective deferrals. An Employee's election for a different percentage reduction or election to have no Benefitable Compensation reduction expires upon a Severance Event.
- (d) **Permissive Withdrawals.** An Employee who has had pre-tax elective deferrals made to the Plan automatically pursuant to the provisions of this Section 2.5 may elect to withdraw such amounts from the Plan. An Employee's permissive withdrawal election must be submitted to the Employer or its delegate within 90 days of the date the first automatic pre-tax elective deferrals are made to the Plan on the Employee's behalf pursuant to the provisions of this Section 2.5. For purposes of this Section 2.5, the date the first automatic pre-tax elective deferral is made to the Plan is the first date Benefitable Compensation subject to automatic reduction would otherwise have been included in the Employee's income. The amount to be distributed to an Employee as a permissive withdrawal hereunder shall be equal to the amount of the automatic pre-tax elective deferral made on his behalf under this Section 2.5 through the effective date of the Employee's permissive withdrawal election, adjusted for allocable gains and losses to the date of distribution. An Employee's withdrawal election shall be effective no later than the earlier of (i) the pay date for the second payroll period beginning after the date the election is made or (ii) the first pay date occurring at least 30 days after the election is made. Pre-tax elective deferrals that are withdrawn in accordance with this Section 2.5(d) shall not be taken into account in applying the limitation on elective deferrals in Section 3.5.
- (e) **Automatic Increase.** The default percentage of Benefitable Compensation under Section 2.5(a) will increase at a rate of 1% up to a maximum rate of 10% each July 1.

- (f) **Covered Employees.** An Employee is subject to this Section 2.5 only to the extent explicitly provided in the collective bargaining agreement between the Employer and the labor organization of which the Employee is a member.



**ARTICLE III  
PLAN CONTRIBUTIONS AND FUNDING**

**Section 3.1 Enrollment Agreement**

- (a) **Initial Enrollment Agreement.** An Employee may elect to make Employee elective deferrals by entering into an Enrollment Agreement to defer Benefitable Compensation not yet earned in a manner consistent with the Code and applicable Treasury Regulations. The Enrollment Agreement shall also include the Employee's designation of such deferrals as pre-tax, Roth, or a combination thereof.
- (b) **Revised Enrollment Agreement.** An Employee may elect to revise his level of Employee elective deferrals, or change allocation between pre-tax and Roth, by entering into an amended Enrollment Agreement to defer Benefitable Compensation not yet earned in a manner consistent with the Code and applicable Treasury Regulations.
- (c) **Content of Enrollment Agreement.** An Enrollment Agreement shall fix the amount of Benefitable Compensation to be deferred and shall be subject to any procedures or requirements established by the Committee.
- (d) **Implementation of Enrollment Agreement.** An initial or revised Enrollment Agreement shall become effective as soon as administratively practicable.
- (e) **Limitation on Elective Deferrals.** Notwithstanding any provision of the Plan to the contrary, in no event will an Employee be allowed to elect to defer an amount in excess of the limitations set forth in Section 3.5.

**Section 3.2 Participant Contributions**

- (a) **Elective Deferrals.**
  - (1) An Employee may elect to make pre-tax elective deferrals of his Benefitable Compensation to the Plan. Pre-tax elective deferrals may also automatically be made to the Plan on behalf of an Employee pursuant to Section 2.5.
  - (2) An Employee may elect to make after-tax Roth elective deferrals of his Benefitable Compensation to the Plan, provided that the contribution is designated irrevocably by the Employee at the time of the cash or deferred election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax elective deferrals the Employee is otherwise eligible to defer under the Plan. Roth elective deferrals are includable in the Employee's taxable gross income at the time they are contributed to the

Plan. An Employee's Roth elective deferrals will be allocated to a separate account maintained for such contributions.

- (b) **Catch-Up Contributions for Participants Age 50 and Over.** A Participant who will attain the age of 50 before the close of the taxable year, and with respect to whom no other elective deferrals may be made to the Plan for the taxable year by reason of the Normal Limitation of Section 3.5(a), may enter into an Enrollment Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of (1) the applicable dollar amount as defined in Code section 414(v)(2)(B), as adjusted for the cost-of-living in accordance with Code section 414(v)(2)(C), or (2) the excess (if any) of (i) the Participant's compensation (as defined in Code section 415(c)(3)) for the year, over (ii) any other elective deferrals of the Participant for such year which are made without regard to this Section 3.2(b). An additional contribution made pursuant to this Section 3.2(b) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Code section 457(e)(15), or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. Notwithstanding the foregoing, for purposes of applying the limitations set forth in Code section 414(v)(2), all plans maintained by the Employer that are described in Code section 414(v)(6)(A)(iii) shall be treated as a single plan. This Section 3.2(b) shall not apply in any taxable year in which the contribution amount permitted by Section 3.2(c) exceeds the contribution amount permitted by this Section 3.2(b).
- (c) **Special Catch-Up Contributions.** Notwithstanding Section 3.5(a) of the Plan, for one or more of the Participant's last three taxable years ending before the taxable year in which the Participant attains Normal Retirement Age, the maximum amount of Deferred Compensation that may be allocated on behalf of a Participant in a taxable year shall not exceed the lesser of:
- (1) The Catch-Up Dollar Limitation, or
  - (2) The sum of:
    - (i) The Normal Limitation for the taxable year, and
    - (ii) The Normal Limitation for each prior taxable year of the Participant, less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if the Participant was eligible to participate in the Plan for such year (or in any other eligible deferred compensation plan established under Code section 457(b) which is required to be taken into account pursuant to Treasury Regulations under Code section 457), and compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation. This Section 3.2(c) shall not apply in any taxable year in which the contribution amount

permitted by Section 3.2(b) exceeds the contribution amount permitted by this Section 3.2(c).

(d) **Rollover Contributions.**

- (1) An eligible rollover distribution may be accepted from an eligible retirement plan maintained by another employer and credited to a Participant's or surviving Spouse Beneficiary's Account under the Plan. The Committee may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code section 402(c)(8)(B). The Plan shall separately account for eligible rollover distributions from any eligible retirement plan that is not an eligible deferred compensation plan described in Code section 457(b) maintained by an eligible governmental employer described in Code section 457(e)(1)(A). Any such rolled-over amount shall not be treated as a contribution subject to the limitations of Section 3.5.
- (2) Notwithstanding Section 3.2(d)(1), the Plan will accept a rollover contribution to a Roth Rollover Account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Code section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code section 402(c). A Participant's Roth Rollover Contributions will be allocated to a separate account maintained for such contributions. Roth Rollover Contributions shall be subject to the provisions of the Plan applicable to Roth elective deferrals rather than the provisions applicable to Rollover Contributions, other than the limits under Section 3.5.

**Section 3.3 Employer Contributions**

The Employer may make discretionary Employer Contributions to the Plan, subject to the limits in Section 3.5.

**Section 3.4 Crediting and Transmittal of Contributions**

- (a) **Crediting of Accounts.** All contributions made pursuant to this Article III are applied to the Account of the applicable Participant and are allocated among the various Investment Funds as elected or deemed elected from time to time by the Participant in accordance with Article V.
- (b) **Transmittal of Contributions.** The Employer will contribute the amounts established pursuant to Sections 3.2 and 3.3 to the Plan as soon as practicable following each payroll period.

### **Section 3.5 Limits on Contributions**

- (a) **General Rule.** Except as provided in Section 3.2(b) or (c), the maximum amount of Deferred Compensation under Section 3.2 and Employer Contributions under Section 3.3 that may be allocated on behalf of a Participant in a taxable year shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation. This limit shall be known as the Normal Limitation.
- (b) **Distribution of Excess Deferrals.** The Plan shall distribute any Deferred Compensation attributable to a taxable year in excess of the limits described in this Section 3.5 in a manner consistent with Code section 457(b) and any Treasury Regulations or other authority promulgated thereunder. If the Participant to whom distribution must be made in accordance with this Section 3.5(b) has made Roth elective deferrals for the year, the amount distributed as an excess deferral shall be made first from pre-tax elective deferrals and then from Roth elective deferrals for the year.
- (c) **Compliance With Code Limits.** Notwithstanding any provision of the Plan to the contrary, in no event may the amount of a Participant's Deferred Compensation and Employer Contributions for any taxable year exceed the limits under Code section 457(b) and the Treasury Regulations thereunder.

### **Section 3.6 Participant Covered by More Than One Eligible Plan**

If the Participant is or has been a participant in one or more other Eligible Section 457(b) Plans, then this Plan and all other such plans shall be considered as one plan for purposes of applying the limitations under Section 3.5. For this purpose, the Committee shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Committee receives sufficient information concerning the Participant's participation in such other plan. For purposes of this Section 3.6, "Eligible Section 457(b) Plan" means an eligible deferred compensation plan within the meaning of Code section 457(b), other than this Plan.

### **Section 3.7 USERRA**

- (a) **Compliance With USERRA.** Notwithstanding any provision of this Plan to the contrary, contributions, allocations and benefits under this Plan shall be made in accordance with Code section 414(u), relating to veterans' reemployment rights under the Uniformed Services Employment and Reemployment Act of 1994.
- (b) **Code Section 401(a)(37).** Notwithstanding any provision of this Plan to the contrary, the Beneficiary of a Participant on a leave of absence to perform military service with reemployment rights described in Code section 414(u) where the Participant cannot return to employment on account of his death, shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under the Plan had the Participant died as an Active Participant to the extent required by Code section 401(a)(37).

### **Section 3.8 Disability**

A disabled Participant (as determined by the Committee) may elect elective deferrals during any portion of the period of his disability to the extent that he has actual Benefitable Compensation (not imputed compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance Event.

### **Section 3.9 In-Plan Roth Rollovers**

A Participant may elect at any time an In-Plan Roth Rollover from the vested portion of any Account. An In-Plan Roth Rollover is not a Plan distribution. A Participant may withdraw amounts from the Participant's In-Plan Roth Rollover Account only when the Participant is eligible for a distribution from the Account that is the source of the In-Plan Roth Rollover. This Section 3.9 is intended, and shall be construed, to comply with Code section 402A(c)(4)(E).

**ARTICLE IV  
PARTICIPANTS' ACCOUNTS**

**Section 4.1 Participants' Accounts**

The Employer or its delegate shall establish and maintain an Account in the name of each Participant to which contributions made to the Plan on behalf of such Participant shall be credited. A Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of contributions made to the Plan on behalf of the Participant pursuant to Article V.

**Section 4.2 Procedures**

The Employer or its delegate shall establish such further accounting procedures for the purpose of making allocations, valuations, and adjustments to Participants' Accounts provided in this Article IV as the Employer or its delegate deems advisable.

## **ARTICLE V INVESTMENTS**

### **Section 5.1 Selection of Investment Fund**

A Participant must select the Investment Funds in which contributions made to the Plan are to be invested in accordance with this Article V and procedures adopted by the Committee. A Participant who fails to designate an Investment Fund, or who is automatically enrolled in the Plan pursuant to Section 2.5, will be deemed to have elected the Investment Fund designated by the Committee as the Plan's default Investment Fund. There may, but is not required to, be multiple default Investment Funds, the usage of which for a particular Participant is based on the Participant's age or other factors identified by the Committee.

### **Section 5.2 Investment of Contributions**

- (a) **Allocation to Investment Funds.** A Participant may direct that contributions made to the Plan be invested in more than one Investment Fund. A Participant may allocate, in whole percentages only, contributions made to the Plan among Investment Funds.
- (b) **Contribution Allocation and Transfers.**
  - (1) **Change in Contribution Allocations.** A Participant may change the manner in which contributions made to the Plan are to be invested at any time. Any such change shall take effect as soon as administratively practicable.
  - (2) **Transfers.** In accordance with procedures established by the Committee, a Participant may transfer amounts in his Account among the Investment Funds. Any such change shall take effect as soon as administratively practicable.
- (c) **Self-Directed Plan.** The Plan shall be a participant-directed plan. The Committee and any other person who may be a fiduciary with respect to the Plan for any reason shall not be responsible for any losses resulting from a Participant's or Beneficiary's investment decisions, including a deemed investment decision resulting because of the investment of all or a portion of an Account in the default Investment Fund described in Section 5.1.

## **ARTICLE VI VALUATION**

### **Section 6.1 Valuation of the Investment Funds**

The Investment Funds shall be valued at least monthly. On each Valuation Date, there shall be allocated to the Account of each Participant his proportionate share of the increase or decrease in the fair market value of his Account in each of the Investment Funds. Whenever an event requires a determination of the value of the Participant's Account, the value shall be computed as of the Valuation Date coincident with or immediately following the date of determination.

### **Section 6.2 Statement of Accounts**

At least once a year, each Participant shall be furnished with a statement setting forth the value of his Account by type of Investment Fund and a schedule of transactions during the statement period.

### **Section 6.3 Valuation Dates**

The Employer or its delegate shall establish procedures for determining the Valuation Dates which shall apply for withdrawals, distributions, or other relevant purposes. Valuation Dates need not be the same for all purposes.



**ARTICLE VII  
VESTING**

**Section 7.1 Vesting**

A Participant shall at all times be fully vested in his Account.

**Section 7.2 Forfeitures**

Any amounts forfeited under the Plan shall be transferred to a separate account in the Plan. Forfeitures shall be used to offset Plan expenses as such term shall be determined by the Committee in its sole discretion and shall not be used to increase any Participant's benefits under the Plan.

## ARTICLE VIII DISTRIBUTIONS

### Section 8.1 Distribution on Severance Event

Upon a Severance Event (other than death), a Participant may elect the distribution of his Account, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 8.2. Notwithstanding the foregoing, the distribution of benefits shall commence not later than April 1 of the year following the later of the calendar year of the Participant's (1) Severance Event or (2) attainment of age 70½ (if born before July 1, 1949), age 72 (if born on or after July 1, 1949 and before January 1, 1951), or age 73 (if born after December 31, 1950).

Notwithstanding the foregoing, the Committee, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

### Section 8.2 Method of Distribution

- (a) **Form of Benefit.** A Participant may elect to have the value of his Account distributed in (1) a lump sum of the Participant's Account balance; (2) a partial distribution of the Participant's Account balance; (3) monthly, quarterly, semi-annual or annual installments over a period chosen by the Participant, continuing until his Account is exhausted, but no longer than the life expectancy of the Participant as permitted under Code section 401(a)(9); or (4) a purchase of an annuity contract for such term and in such form as the Participant selects that provides for payments in the form of an irrevocable annuity each calendar year of amounts not less than the amount required under Code section 401(a)(9).
- (b) **Delay in Payment.** In no event shall the Committee or Employer be liable for any gains or losses due to a delay in payment of a Participant's Account.

### Section 8.3 Payments to Incompetents and Minors

- (a) **Incompetency.** If the Committee is served with an order of a court of competent jurisdiction that declares that a person entitled to benefits under the terms of the Plan is unable for any reason (including, but not limited to, illness, infirmity, or mental incapacity) to attend to his affairs, or is deemed so by the Committee, the Committee shall comply with such order. Notwithstanding the foregoing, the Committee shall have no duty to investigate whether or not a Participant is competent.
- (b) **Guardianship.** If proof of legal guardianship satisfactory to the Committee is provided, payments owing to a minor may be made to the minor's legal guardian.

- (c) **Discharge of Liability.** Any payment to an individual described in this Section 8.3 shall be a complete discharge of all liability under the Plan with respect to such payment.

#### **Section 8.4 Payment of Benefits**

The payment of benefits in accordance with the terms of the Plan may be made by the Employer or its delegate, or by any other person so authorized by the Employer to make such disbursement.

#### **Section 8.5 In-Service Distributions**

- (a) **In-Service Distributions After Age 70½.** A Participant may elect to receive in-service distributions from his Account on or after the calendar year in which the Participant attains age 70½ to the extent permitted by the Code and any Treasury Regulations promulgated thereunder.
- (b) **Unforeseeable Emergencies.** In the event an Unforeseeable Emergency occurs, a Participant or Beneficiary (if the Participant is deceased) may apply to the Employer, to the extent permitted by the Code, to receive that part of the value of his Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Committee, the Participant or Beneficiary shall be paid only such amount as the Employer deems necessary to meet the emergency need. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case.
- (c) **De minimis Account Balance Distributions.** A Participant before a Severance Event may request a distribution of his Account (excluding the Rollover Account), which shall be paid in a lump sum payment as soon as practical following the direction if (i) the total Account balance does not exceed \$7,000 (or the dollar limit under Code section 411(a)(11), if greater), (ii) the Participant has not previously received a distribution of their total Account balance payable to the Participant under this Section 8.5(c), and (iii) no elective deferrals have been made with respect to the Participant during the two-year period ending immediately before the date of the distribution.

The Plan does not permit the Committee to direct payments under the terms of this Section 8.5(c) without the Participant's consent.

- (d) **Rollover Account Distributions.** The Participant before a Severance Event may at any time elect to receive an in-service distribution of all or any portion of the amount held in his Rollover Account. Any Roth amounts rolled over to the Plan are treated as Roth elective deferrals for Plan purposes and are not eligible for in-service withdrawal under this Section 8.5(d).

## Section 8.6 Automatic Benefit Payments

Notwithstanding any provision of the Plan to the contrary, distribution must be made in accordance with the provisions of this Section 8.6, if applicable.

- (a) **Required Commencement Under Code Section 401(a)(9).** A Participant's vested Account must be paid to the Participant commencing no later than his required beginning date pursuant to the requirements of Code sections 401(a)(9) and 457(d) and any applicable Treasury Regulations thereunder, including the minimum distribution incidental benefit rule of Code section 401(a)(9)(G). The foregoing requirements shall be interpreted based on a reasonable and good faith interpretation of Code section 401(a)(9).

Notwithstanding the foregoing, a Participant or Beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of Code section 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will not receive those distributions unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. For purposes of Section 8.7 of the Plan, a direct rollover will be offered only for distributions that would be eligible rollover distributions in the absence of Code section 401(a)(9)(I).

- (b) **Mandatory Rollover.** Except as required under the Code section 401(a)(9) required minimum distribution rules, there shall be no mandatory cashouts made from the Plan and, accordingly, the Code section 401(a)(31)(B) mandatory rollover rules will not be relevant to the Plan.

## Section 8.7 Rollover to Another Plan or IRA

- (a) **Rollover Distributions.** A Distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. For purposes of this Section, the following definitions apply:
- (1) **"Eligible Rollover Distribution"** means a distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (A) any distribution that is one of a series of substantially equal periodic payments (not less

frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Beneficiary, or for a specified period of 10 years or more; (B) any distribution to the extent distribution is required under Code section 401(a)(9); and (C) an unforeseeable emergency distribution.

- (2) **“Eligible Retirement Plan”** means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), and an eligible plan under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or a qualified trust described in Code section 401(a) that accepts the Distributee's Eligible Rollover Distribution. An Eligible Retirement Plan also includes a Roth individual retirement account or annuity described in Code section 408A, subject to the limitations set forth in such Code provision; provided, however, that the Committee is not responsible for assuring that a Distributee is eligible to make such a rollover. This definition of Eligible Retirement Plan also applies in the case of a distribution to a surviving Spouse.

Notwithstanding any other provision of this Section 8.7(a)(2), solely with respect to any Roth elective deferrals that are distributed from the Plan, an Eligible Retirement Plan means a qualified trust described in Code section 401(a) that has a designated Roth account, a plan under which amounts are contributed by an individual's employer for an annuity contract described in Code section 403(b) that has a designated Roth account, an eligible plan under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that has a designated Roth account, or a Roth IRA described in Code section 408A(b).

- (3) **“Direct Rollover”** means a payment by the Plan directly to the Eligible Retirement Plan specified by the Distributee.
- (4) **“Distributee”** means a Participant, the Participant's Spouse or surviving Spouse, and the Participant's Spouse or former Spouse who is the Alternate Payee.

- (b) **Non-Spouse Rollovers.** A non-Spouse Beneficiary may elect to make a direct rollover to an inherited individual retirement account or annuity described in Code section 408(a) or Code section 408(b), or a Roth individual retirement account or annuity described in Code section 408A that is established on behalf of the Beneficiary. Such rollover shall be made in a manner consistent with Code section 402(c)(11) and any other applicable guidance.

**ARTICLE IX  
DISTRIBUTIONS AFTER DEATH**

**Section 9.1 Distributions to a Beneficiary**

- (a) **Post-Retirement Death Benefits.** Should the Participant die after he has begun to receive benefits in the form of installments, the remaining installments shall be made to the Participant's Beneficiary, subject to any limitations under Code section 401(a)(9), unless the Beneficiary elects to receive such amounts in a single lump sum payment. In no event shall the Employer or Committee be liable to the Participant for the amount of any payment made in the name of the Participant before the Committee receives proof of death of the Participant.

The Beneficiary of a Participant who annuitized his Account prior to his death is only entitled to the survivor benefits, if any, under the annuity option elected by the Participant.

- (b) **Pre-Retirement Death Benefits.** Should the Participant die before he has begun to receive distribution of his benefit under the Plan or no distribution election is currently in effect with respect to the Participant under Article VIII, his benefit will be distributed as a lump sum unless the Beneficiary, as determined pursuant to Section 9.2, elects a different form of benefit as set forth in Section 8.2(a). Such benefit shall, subject to Section 9.1(d), commence as of the date selected by the Beneficiary.
- (c) **Death of Beneficiary.** In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.
- (d) **Required Minimum Distribution Rules.** Notwithstanding any provision of the Plan to the contrary, payments to a Beneficiary shall be made in compliance with the requirements of Code sections 401(a)(9) and 457(d) and any applicable Treasury Regulations thereunder, including the minimum distribution incidental benefit rule in Code section 401(a)(9)(G). The foregoing requirements shall be interpreted based on a reasonable and good faith interpretation of Code section 401(a)(9).
- (e) **Application of Other Distribution Rules.** The following rules applicable to Participants under Article VIII also apply to a Beneficiary:
- (1) **Automatic Benefit Payment Rules.** The automatic benefit payment rules in Section 8.6; and
  - (2) **Rollover Rules.** The rollover rules in Section 8.7 to the extent applicable under the Code and applicable Treasury Regulations.

## Section 9.2 Designation of Beneficiary

A Participant may designate a Beneficiary of his Account pursuant to the following rules:

- (a) **Designation Process.** A designation of a Beneficiary will not be effective for any purpose unless and until it has been signed and filed on an appropriate form by the Participant with, and accepted by, the Committee. This designation will take effect prospectively only, revoking all prior Beneficiary designations filed by the Participant, and without prejudice to any payor or payee on account of any payments made before receipt and acceptance of the appropriate form by the Committee.
- (b) **Legal Requirements.** Notwithstanding any provision of Section 9.2(a) to the contrary, the following provisions will apply:
  - (1) **Changing a Designation.** A Participant may change his Beneficiary any number of times before the date his benefits are to commence. If an installment form of benefit is elected, a Beneficiary may be changed at any time and such designation shall apply to any future installment payments.
  - (2) **Disclaimer.** A Beneficiary may disclaim Plan benefits by filing a disclaimer with the Committee before the earlier of (A) the date a check for Plan benefits is sent to such Beneficiary, or (B) nine months after the Beneficiary becomes entitled to a benefit under the Plan. A disclaimer is valid only if it qualifies under Code section 2518 and is valid under applicable state law. If a Beneficiary timely files a disclaimer with the Plan, the benefits will pass as if the Beneficiary had predeceased the Participant.
  - (3) **Default Beneficiary.** If a Participant dies without having a valid Beneficiary designation in effect, the Participant's Account will be distributed to the deceased Participant's default Beneficiary.
  - (4) **Death of Beneficiary After Participant Death.** If a Beneficiary dies after the death of the Participant but prior to distribution to him, the balance of the distribution will be distributed to the Beneficiary's estate.

## **ARTICLE X TRANSFERS**

### **Section 10.1 Incoming Transfers**

Subject to the requirements of Code section 457(e)(10), any Treasury Regulations thereunder, and the procedures established by the Committee, a transfer may be accepted from a governmental eligible deferred compensation plan if such transfer complies with the requirements set forth below:

- (a) The transferor governmental eligible deferred compensation plan must provide for transfers;
- (b) The Participant or Beneficiary whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at least equal to the amount deferred with respect to the Participant or Beneficiary immediately before the transfer;
- (c) In the case of a transfer for a Participant, the Participant must have had a Severance Event with the transferring employer and must be performing services for the Employer.

The Committee may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code section 457(e)(10) and Treasury Regulation section 1.457-10(b), to confirm that such plan is a governmental eligible deferred compensation plan within the meaning of Code section 457(b) and Treasury Regulation section 1.457-2(f), and to assure that transfers are provided for under such plan. The Committee may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Committee agree to hold such other assets under the Plan.

Any such transferred amount shall be treated as an elective deferral, except that such transferred amount shall not be considered a contribution subject to the limitations of Section 3.5.

### **Section 10.2 Plan-to-Plan Transfers From the Plan**

- (a) At the direction of the Employer, the Committee may permit Participants or Beneficiaries to elect to have his Account transferred to another eligible governmental plan within the meaning of Treasury Regulatory section 1.457-2(f), if the other eligible governmental plan provides for the receipt of transfers, 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 the conditions of subparagraph (i), (ii), or (iii) are met.
  - (1) A transfer from the Plan to another eligible governmental plan is permitted in the case of a transfer for a Participant if the Participant has had a



Severance Event with the Employer and is performing services for the entity maintaining the other eligible governmental plan.

- (2) A transfer from the Plan to another eligible governmental plan is permitted if:
    - (i) The transfer is to another eligible governmental plan within the same State as the Plan;
    - (ii) All the assets held by the Plan are transferred; and
    - (iii) A Participant or Beneficiary whose amounts deferred are being transferred is not eligible for additional annual deferrals in the other eligible governmental plan unless he is performing services for the entity maintaining the other eligible governmental plan.
  - (3) A transfer from the Plan to another eligible governmental plan of the Employer is permitted if:
    - (i) The transfer is to another eligible governmental plan of the Employer (and, for this purpose, an employer is not treated as the Employer if the Participant's compensation is paid by a different entity); and
    - (ii) A Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional elective deferrals in the other eligible governmental plan unless he performing services for the entity maintaining the other eligible governmental plan.
- (b) Upon the transfer of assets under this Section 10.2, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Committee may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 10.2, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulation section 1.457-10(b).

### **Section 10.3 Permissive Service Credit Transfers**

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account transferred to the defined benefit governmental plan. A transfer under this Section 10.3(a) may be made before the Participant has had a Severance Event and without regard to whether the defined benefit governmental plan is maintained by the Employer. The distribution rules applicable to the defined benefit governmental plan to

which any amounts are transferred under this Section 10.3 shall apply to the transferred amounts and any benefits attributable to the transferred amounts.

- (b) A transfer may be made under Section 10.3(a) only if the transfer is either for the purchase of permissive service credit (as defined in Code section 415(n)(3)(A)) under the receiving defined benefit governmental plan, including service credit for periods for which there is no performance of services, service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan, and service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Code section 415(n)(3)(C)(i)) of an educational organization described in Code section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12) or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed, without application of the limitations of Code section 415(n)(3)(B) in determining whether the transfer is for the purchase of permissive service credit, or a repayment to which Code section 415 does not apply by reason of Code section 415(k)(3).

## **ARTICLE XI PLAN ADMINISTRATION**

### **Section 11.1 Administration of the Plan**

This Plan shall be administered by the Committee.

### **Section 11.2 RESERVED**

### **Section 11.3 Delegation of Authority**

The Committee shall be deemed to have delegated its responsibilities for determining benefits, eligibility for benefits, and/or other plan operations to a third party administrator, insurer or other fiduciary where such person has been appointed by the Committee or its delegate to make such determinations. In such case, such other person shall have the duties and powers as the Committee as set forth in this Plan document, including the complete discretion to interpret and construe the provisions of the Plan and shall be afforded the same deference and arbitrary and capricious level of review afforded to the Committee.

### **Section 11.4 Interpretive Authority and Conclusiveness**

The Committee shall have complete discretion to interpret and construe the provisions of the Plan, make findings of fact, and determine all questions arising in the administration, interpretation, and application of the Plan (including, but not limited to, the power to make a determination of an individual's eligibility for Plan participation, the right, amount, form, and timing of any benefit payable under the Plan and the date on which any individual ceases to be a Participant). The Committee's discretionary authority shall also include the power to correct errors, supply omissions, or reconcile any inconsistency in such manner and to such extent as it shall deem necessary to carry out the purposes of the Plan. All decisions and interpretations of the Committee made pursuant to the Plan shall be final, conclusive and binding on all persons and may not be overturned unless found by a court to be arbitrary and capricious.

### **Section 11.5 Expenses**

All fees and expenses incurred in connection with the operation and administration of the Plan, including, but not limited to, Committee, legal, accounting, actuarial, investment, management, and administrative fees and expenses may be paid out of the Trust or any other Plan assets, to the extent that it is legally permissible for these fees and expenses to be so paid. The Employer may, but is not required, to pay such fees and expenses directly. The Employer may also advance amounts properly payable by the Plan or Trust and then obtain reimbursement from the Plan for these advances to the extent approved by the Committee. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Committee may charge to the Account of an individual a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or Alternate Payee or to the Participant for Plan loans. If liquid assets of the Plan are insufficient to cover the fees of the Committee, then

Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets.

#### **Section 11.6 Claims Procedures**

All claims for benefits shall be evaluated as set forth in resolutions adopted by the Committee.

#### **Section 11.7 Indemnification**

The Committee and any staff employed by the Plan (or a former employee of the Plan) shall be indemnified and held harmless by the Employer against and with respect to all damages, losses, obligations, liabilities, liens, deficiencies, costs and expenses, including without limitation, reasonable attorney's fees and other costs incident to any suit, action, investigation, claim or proceedings to which he may be a party by reason of his performance of any functions and duties under the Plan, except in relation to matters as to which he shall be held liable for an act of gross negligence or willful misconduct in the performance of his duties. The foregoing right to indemnification shall be in addition to such other rights as the Committee or other person may enjoy as a matter of law or by reason of insurance coverage of any kind. Rights granted hereunder shall be in addition to and not in lieu of any rights to indemnification to which the Committee or other person may be entitled pursuant to the governing documents of the Employer. Any rights accruing to the Committee under this Section 11.7 shall apply to any individual who serves as a member of the Committee on an individual basis and to the Committee on a collective basis.

#### **Section 11.8 Discharge of Obligation; Receipt and Release**

All payments from the Plan constitute a complete discharge of all obligations of the Plan, the Committee, and the Employer to the extent of the portion of the Account paid.

**ARTICLE XII  
AMENDMENT OR TERMINATION OF PLAN**

**Section 12.1 Plan Amendment**

- (a) **Amendment by the Employer.** The Employer, by a written action, may amend or modify the Plan in whole or in part, at any time, for any reason. The Employer shall not have the right to reduce or affect the value of any Participant's Account or any rights accrued under the Plan prior to amendment.
- (b) **Amendment by Delegates of the Employer.** The Employer may delegate its authority to adopt amendments as described in Section 12.1(a) to the Committee or such other party, by a written action, provided, however, that any such delegation shall only permit the adoption of amendments in one or more of the following situations:
  - (1) **Amendment Required by Law.** Any amendment that is necessary or appropriate to comply with applicable laws and regulations, including without limitation, the Code.
  - (2) **Amendment To Clarify or Correct Plan.** Any amendment that is intended to correct operational or drafting errors or omissions.
  - (3) **Amendment to Improve Operation or Relating to Governance or Administration.** Any amendment intended to increase operational efficiency, relate to matters of plan governance or administration and does not impose increased costs on the Employer.
- (c) **Approval.** Notwithstanding the foregoing, all amendments must be recommended to and approved by the Committee of County Commissioners.

**Section 12.2 Plan Termination**

- (a) **Action by the Employer.** The Employer, by a written action, may terminate the Plan at any time, for any reason.
- (b) **Effect of Termination.** No termination shall affect the amount of any Benefitable Compensation deferred or Employer Contributions made before the time of the termination and income thereon accrued to the date of the termination in accordance with the terms of the Plan. Upon such termination, the Employer shall have no further obligation to make allocations or otherwise contribute to the Plan. Plan assets, if any, shall be distributed at the direction of the Committee in accordance with Articles VIII and IX, and the requirements of Code section 457 and any applicable Treasury Regulations thereunder.

**ARTICLE XIII  
NON-ASSIGNABILITY**

**Section 13.1 Domestic Relations Order**

Payment shall be made in accordance with the provisions of any judgment, decree, or order which:

- (a) creates for, or assigns to, a Spouse, former Spouse, or child of a Participant the right to receive all or a portion of the Participant's benefits under the Plan for the purpose of providing child support or marital property rights to that Spouse, former Spouse, or child;
- (b) is made pursuant to a state domestic relations law;
- (c) does not require the Plan to provide any type of benefit, or any option, not otherwise provided under the Plan; and
- (d) otherwise meets the requirements of Code section 414(p)(1)(A)(i), as a Domestic Relations Order.

**Section 13.2 Procedures**

The Committee, pursuant to established procedures, shall determine whether a domestic relations order satisfies the requirements for a Domestic Relations Order under Code section 414(p)(1)(A)(i).

**Section 13.3 Timing of Payments to Alternate Payees**

Any amount which becomes payable to an Alternate Payee under a Domestic Relations Order may be paid at any time after qualification of the Domestic Relations Order even though the Participant may not be entitled to payment under the Plan at that time. The payment to an Alternate Payee must be in a form available to Participants under the Plan.

## ARTICLE XIV LOANS

### Section 14.1 Loan Requirements

- (a) **Loans Permitted Subject to Applicable Requirements.** Loans shall be permitted under the Plan in accordance with and subject to Code section 72(p) and Treasury Regulation section 1.72(p)-1.
- (b) **Allocation of Loans to Accounts.** Any loan will be allocated to the Account of the Participant.
- (c) **Reasonably Equivalent Basis.** Loans shall be made available to Active Participants on a reasonably equivalent basis.

### Section 14.2 Maximum Loan Amount

- (a) **General Rule.** A Participant loan may not be made to the extent such loan (when added to the outstanding balance of all other loans made to the Participant) exceeds the lesser of:
  - (1) \$50,000, reduced by the excess, if any, of the Participant's highest outstanding balance on all loans from the Plan during the one-year period ending on the day before the date on which such loan is made, over the Participant's outstanding balance of loans from the Plan as of the date such loan is made; or
  - (2) 50% of the Participant's vested Account balance.
- (b) **Plan Aggregation.** For purposes of this Section 14.2, all loans from all plans of the Employer and other members of a group of employers described in Code sections 414(b), 414(c), and 414(m) are aggregated.

### Section 14.3 Source of Loan Proceeds

Loan proceeds will be taken pro rata from the vested portions of the Participant's Elective Deferrals Account, Rollover Account, and Employer Contribution Account, if any, and each loan repayment shall be credited to the sub-account from which the loan was taken.

### Section 14.4 Loan Types; Limits on Loans

A Participant is limited to one outstanding loan at a time. In applying this limit, a defaulted loan is treated as an outstanding loan until it is repaid. The minimum loan amount is \$1,000.

## **Section 14.5 Loan Types**

- (a) **Primary Residence Loan.** A primary residence loan is a loan used to purchase a Participant's principal residence. The term of a primary residence loan may not exceed 30 years.
- (b) **General Loan.** A general loan is any loan other than a primary residence loan. The term of a general loan may not exceed 5 years.

## **Section 14.6 Interest Rates**

Payments of interest and loan principal must be made on a level, amortized basis. The loan interest rate is the prime rate plus 2%.

## **Section 14.7 Loan Repayments and Payoffs**

Loan repayments to the Plan will be made through payroll deductions. These loan payments will be allocated to the Participant's Account and invested according to the Participant's current investment elections at the time of repayment for the sub-account to which the repayment is credited. Loans may be pre-paid (either partially or in full) at any time without penalty.

## **Section 14.8 Leave of Absence**

A Participant with an outstanding loan may suspend loan payments to the Plan for up to 12 months for any period during which the Participant's pay is insufficient to fully repay the required loan payments. Upon the Participant's return to employment (or after the end of the 12-month period, if earlier), the Participant's outstanding loan will be reamortized over the remaining period of such loan to make up for the missed payments. The reamortized loan may extend beyond the original loan term so long as the loan is paid in full by whichever of the following dates comes first:

- (a) the date which is five years from the original date of the loan (or the end of the suspension, if sooner), or
- (b) the original loan repayment deadline (or the end of the suspension period, if later) plus the length of the suspension period.

A Participant with an outstanding loan may also suspend loan payments for any period such Participant is on military leave, in accordance with Code section 414(u)(4). Upon the Participant's return from military leave (or the expiration of five years from the date the Participant began his military leave, if earlier), loan payments will recommence under the amortization schedule in effect prior to the Participant's military leave, without regard to the five-year maximum loan repayment period. Alternatively, the loan may be reamortized to require a different level of loan payment, as long as the amount and frequency of such payments are not less than the amount and frequency under the amortization schedule in effect prior to the Participant's military leave.



### **Section 14.9 Default**

A Participant will be considered to be in default with respect to a loan if any scheduled repayment with respect to such loan is not made by the end of the calendar quarter following the calendar quarter in which the missed payment was due. The Participant may repay the outstanding balance of a defaulted loan (including accrued interest through the date of repayment) at any time.

### **Section 14.10 Collateral**

The collateral for a Plan loan is a security interest in 50 percent of the Participant's vested Account balance.

### **Section 14.11 If Employment Terminates**

A Participant loan becomes due and payable in full immediately upon the Participant's Severance Event. Upon a Participant's severance, the Participant may repay the entire outstanding balance of the loan (including any accrued interest) within a reasonable period following the Severance Event. If the Participant does not repay the entire outstanding loan balance before the earlier of the end of the calendar quarter following the calendar quarter in which the Severance Event occurs or the commencement of the distribution of the Participant's Account, the Participant's vested Account balance will be reduced by the remaining outstanding balance of the loan, and the remaining vested Account balance will be distributed in accordance with the distribution provisions under Article VIII. If the outstanding loan balance of a deceased Participant is not repaid, the outstanding loan balance shall be treated as a distribution to the Participant and shall reduce the death benefit amount payable to the Beneficiary under Article IX.

**ARTICLE XV  
MISCELLANEOUS**

**Section 15.1 Eligible 457(b) Governmental Plan**

Notwithstanding any provision of the Plan to the contrary, the Plan shall be interpreted and administered in a manner consistent with Code section 457(b) as applied to an entity described in Code section 457(e)(1)(A) and any applicable guidance thereunder. In the event of a conflict between the terms of the Plan and Code section 457(b) as applicable to an entity described in Code section 457(e)(1)(A) or any applicable guidance thereunder, the Plan shall comply with the requirements of Code section 457(b) as applicable to an entity described in Code section 457(e)(1)(A) and any applicable guidance thereunder notwithstanding any inconsistent Plan terms.

**Section 15.2 Word Usage**

Words used herein in the singular shall include the plural and the plural the singular where applicable, and one gender shall include the other genders where appropriate.

**Section 15.3 Headings**

The headings of articles, sections or other subdivisions hereof are included solely for convenience of reference, and if there is any conflict between such headings and the text of the Plan, the text shall control.

**Section 15.4 Entire Agreement**

This Plan and any properly adopted amendment to the Plan shall constitute the total agreement or contract between the Committee and/or Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant. No person shall have any interest in or right to any part of the assets or income of the Plan, except to the extent expressly provided in this Plan.

**Section 15.5 Employee Rights Not Expanded**

Participation in this Plan shall not be deemed to be a contract between the Committee and/or Employer and any Participant. Nor shall anything contained herein be deemed to give any Participant the right to be retained in the employ or agency of the Employer or to interfere with the right of the Employer to discharge any Participant at any time, nor shall it be deemed to give the Employer the right to require any Participant to remain in its employ or agency, nor shall it interfere with such Participant's right to terminate his employment or agency at any time or, except as provided in the Plan, the right to any payment or benefit from the Plan, Committee or the Employer.

## **Section 15.6 Electronic Administration**

In its rules and procedures for the administration of the Plan (including, without limitation, procedures covering any directions, elections, or other action by Participants, and the delivery of statements and other disclosure materials to such individuals, regardless of whether the Plan states that such information be provided or actions take place in a written form), the Committee may provide for the use of electronic communications and other media as permitted by applicable Treasury Regulations and DOL Regulations.

## **Section 15.7 Severability**

If a provision of the Plan is held illegal or invalid, the illegality or invalidity does not affect the remaining parts of the Plan and the Plan must be construed and enforced as if the illegal or invalid provision had not been included in the Plan.

## **Section 15.8 Gender and Number**

In order to shorten and to improve the readability of the Plan document, phrases such as “Employee or Employees,” are used sparingly. Except where otherwise indicated by the context, any gender may be construed to include all genders, and the singular or plural may be construed to include the plural or singular, respectively.

## **Section 15.9 Other Interpretive Principles**

When a reference is made in the Plan to Articles, Sections, or Appendices, such reference is to an Article or Section of or Appendix to this Plan unless otherwise indicated. The table of contents and headings contained in the Plan are for reference purposes only and shall not affect the meaning or interpretation of the Plan. Whenever the words “include,” “includes” or “including” are used in this Plan, they are deemed to be followed by the words “without limitation.”

## **Section 15.10 Required Information**

- (a) **Duty to Provide.** A Participant must furnish the Committee with such information or proof as requested.
- (b) **Committee Reliance.** The Committee may rely on any information furnished by a Participant and this information is conclusively binding upon the Participant furnishing the evidence, but is not binding upon Committee.
- (c) **False Statements.** If a person claiming benefits under the Plan makes a false statement that is material to the person’s claim for benefits, the Committee may adjust the benefits payable to the person or require that the payments be returned to the Plan, or take any other action as deemed reasonable.
- (d) **Failure of Participants to Comply With Request.** Failure on the part of a Participant to comply with a request by the Committee for information or proof within a reasonable period of time is sufficient grounds for delay in the payment

of any benefits that may be due under the Plan until information or proof is received.

### **Section 15.11 Notice**

- (a) **Communications From Participants Or Beneficiaries.** Any notice, election, application, instruction, designation or other form of communication required to be given or submitted by any Employee or Participant will be in the form and delivery method as is prescribed from time to time by the Committee and is deemed to be duly given only upon actual receipt thereof.
- (b) **Communications From The Committee.** Any notice, statement, report and other communication from the Committee to any Employee or Participant required or permitted by the Plan will be deemed to have been duly given when delivered by hand to such person, mailed to such person at the address last appearing on the records of the Committee or delivered electronically to such person.
- (c) **Mailing Address.** Each person entitled to receive a payment under the Plan must file with the Committee his complete mailing address and each change therein. A check or communication mailed to any person at the address on file with the Committee is deemed to have been received by such person for all purposes of the Plan, and no Employee or agent of the Committee is obligated to search for or ascertain the location of any such person except as required by applicable law. If the Committee is in doubt as to whether payments are being received by the person entitled thereto, it may, by registered mail addressed to such person at the address last known to the Committee, notify such person that all future payments will be withheld until such person submits to the Committee the proper mailing address and such other information as the Committee may reasonably request.

### **Section 15.12 Missing Participants and Beneficiaries**

If the Committee, after making a reasonably diligent effort in compliance with applicable Code guidance, cannot locate a Participant or Beneficiary, including by giving written notice addressed to the Participant or Beneficiary's last known address as shown in the records of the Employer, the amount payable to the Participant or Beneficiary shall be forfeited and treated as earnings of the Plan for the Plan Year in which the forfeiture occurs (in all events prior to the time such benefit would otherwise escheat under applicable law), subject to reinstatement if a proper claim is subsequently presented. In the event that an Account is required to be reinstated under the foregoing provisions, the amount to be reinstated is first to be made from forfeitures for the Plan Year in which such reinstatement occurs and, if such amount is not sufficient, from Employer Contributions.

### **Section 15.13 Nonalienation**

Except to the extent provided in Article XIII and Section 15.16, or as otherwise required by the Code, no benefit payable under the Plan may be subject in any manner to anticipation, sale, transfer, assignment, pledge, encumbrance, security interest or charge, and any attempt to

anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or grant a security interest in the same is void and of no effect; nor may any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

#### **Section 15.14 Exclusive Benefit**

Prior to the satisfaction of all liabilities under the Plan, no part of the assets of the Plan or its related Trust shall be used for or diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries except as expressly provided in this Plan.

#### **Section 15.15 Governing Law**

The laws of the State of Nevada shall apply in determining the construction and validity of this Plan.

#### **Section 15.15 Levy**

Notwithstanding Section 15.13, the Committee may pay from a Participant's or Beneficiary's Account Balance the amount that the Committee finds is lawfully demanded under a levy issued by the Internal Revenue Service to the Plan with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

## APPENDIX A – DEFINITIONS

Whenever used in the Plan, the following terms, when capitalized, have the respective meanings set forth below unless otherwise expressly provided herein.

**“Account”** means the total of the subaccounts recording the interest of a Participant in the Plan. The subaccounts maintained under the Plan shall be the following:

- (a) **“Elective Deferrals Account”** means the account to which a Participant’s pre-tax elective deferrals, pre-tax Catch-Up Contributions, and earnings and losses on such contributions are credited.
- (b) **“Roth Elective Deferrals Account”** means the account to which a Participant’s Roth elective deferrals, Roth Catch-Up Contributions, and earnings and losses on such contributions are credited.
- (c) **“Rollover Account”** means the account to which a Participant’s Rollover Contributions and any transfers under Section 10.1, and earnings and losses on such contributions are credited.
- (d) **“Roth Rollover Account”** means the account to which a Participant’s Roth Rollover Contributions and earnings and losses on such contributions are credited.
- (e) **“Employer Contribution Account”** means the account to which a Participant’s Employer Contributions, if any, and earnings and losses on such contributions are credited.
- (f) **“In-Plan Roth Rollover Account”** means the account to which a Participant’s In-Plan Roth Rollovers under Section 3.9 and earnings and losses on such amounts are credited.

**“Active Participant”** means an Employee who satisfies the requirements to be an Active Participant under Article II.

**“Alternate Payee”** means any person who is an alternate payee under a Domestic Relations Order.

**“Beneficiary”** means the person or persons designated as such from time to time by a Participant pursuant to the requirements set forth in Section 9.2. A Beneficiary designation shall only take effect once it is processed and put into effect by the Committee. In the absence of a written designation of a Beneficiary, the Beneficiary shall be the Participant’s estate. A Beneficiary shall have no rights hereunder during the Participant’s lifetime except as otherwise provided by law.

**“Benefitable Compensation”** compensation as reported on Form W-2 payable to an Employee after becoming a Participant prior to any reduction pursuant to Code sections 125, 132(f), 401(k), 403(b), and 457(b) (including an election to defer under Section 2.2 or a deemed

election under Section 2.5), including any of the following made to a Participant after a Severance Event, if made by the later of (1) the end of the calendar year in which the Severance Event occurred or (2) within 2½ months of such Severance Event:

- (a) payments that, absent a Severance Event, would have been paid to the Participant while the Participant continued in employment with the Employer, but only if such payments constitute regular compensation for services during the Participant’s regular working hours, compensation for services outside the Participant’s regular working hours (such as overtime or a shift differential), commissions, bonuses or other similar compensation; or
- (b) payments for unused sick, vacation, or other leave derived from public funds, which are earned by a Participant while an Employee of the Employer.

Benefitable Compensation shall also include differential wage payments within the meaning of Code section 3401(h). Benefitable Compensation for a taxable year shall not exceed the Dollar Limitation.

**“Catch-Up Dollar Limitation”** means twice the Dollar Limitation.

**“Code”** means the Internal Revenue Code of 1986 as amended.

**“Committee”** means the Washoe County Deferred Compensation Committee, which shall act in accordance with the authority provided under Articles XI and XII and any other applicable governing documents.

**“Deferred Compensation”** means the amount of Benefitable Compensation that is allocated to a Participant’s Account pursuant to Section 3.2.

**“Dollar Limitation”** means the applicable dollar amount within the meaning of Code sections 457(b)(2)(A) and 457(e)(15)(A), as adjusted for the cost-of-living in accordance with Code section 457(e)(15)(B).

**“Domestic Relations Order”** means a domestic relations order that meets the applicable requirements of Code section 414(p) as determined pursuant to Article XIII.

**“Employee”** means a person who is employed by the Employer on a full-time basis and any employee in an elected or appointed position; provided, however, that the term Employee shall not include a leased employee, independent contractor, or any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan. Any individual who is not treated by the Employer as a common law employee of the Employer shall be excluded from Plan participation even if a court or administrative agency determines that such individual is a common law employee of the Employer, unless the Employer has included the individual in Plan participation as an independent contractor.

**“Employer”** means Washoe County.

**“Employer Contributions”** means pre-tax Employer contributions made to a Participant’s Account on behalf of a Participant.

**“Enrollment Agreement”** means an agreement or agreements entered into between an Employee and the Employer, including any amendments or modifications thereof, for the purpose of allowing an Employee to make elective deferrals to the Plan. Except with respect to the provisions of Section 2.1(a)(1), Enrollment Agreement also means an Employee’s deemed election under Section 2.5(a) to have his Benefitable Compensation reduced and have that amount contributed as an elective deferral on his behalf.

**“Investment Funds”** means the investment fund(s) available for the investment of a Participant’s Account.

**“Normal Limitation”** means the maximum amount of Deferred Compensation for any Participant for any taxable year as set forth in Section 3.5(a).

**“Normal Retirement Age”** means the following, as determined by age and years of service as outlined by the Public Employees’ Retirement System of Nevada, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Committee:

- (a) For Employees hired prior to January 1, 2010:
  - (1) For non-police and fire Employees, the Normal Retirement Age will be age 65 and 5 years of service, age 60 and 10 years of service, or any age and 30 years of service.
  - (2) For police and fire Employees, the Normal Retirement Age will be age 65 and 5 years of service, age 55 and 10 years of service, age 50 and 20 years of service, or any age and 25 years of service.
- (b) For Employees hired on or after January 1, 2010 and prior to July 1, 2015:
  - (1) For non-police and fire Employees, the Normal Retirement Age will be age 65 and 5 years of service, age 62 and 10 years of service, or any age and 30 years of service.
  - (2) For police and fire Employees, the Normal Retirement Age will be age 65 and 5 years of service, age 60 and 10 years of service, age 50 and 20 years of service, or any age and 30 years of service.
- (c) For Employees hired on or after July 1, 2015:
  - (1) For non-police and fire Employees, the Normal Retirement Age will be age 65 and 5 years of service, age 62 and 10 years of service, age 55 and 30 years of service, or any age and 33.3 years of service.



- (2) For police and fire Employees, the Normal Retirement Age will be age 65 and 5 years of service, age 60 and 10 years of service, or age 50 and 20 years of service.

A Participant's Normal Retirement Age determines the period during which a Participant may utilize the catch-up limitation of Section 3.2(c). Once a Participant has to any extent utilized the catch-up limitation of Section 3.2(c), his Normal Retirement Age may not be changed. Notwithstanding any provision of the Plan to the contrary, Normal Retirement Age may not be earlier than the earliest age or later than the latest age permitted under Code section 457(b) and Treasury Regulation section 1.457-4(c)(3)(v).

**"Participant"** means an Employee or a former Employee for whom an Account is maintained under the Plan.

**"Percentage Limitation"** means 100 percent of the Participant's Benefitable Compensation for the taxable year.

**"Plan"** means the Washoe County Deferred Compensation Plan.

**"Plan Year"** means the calendar year.

**"Rollover Contributions"** means rollover contributions made by a Participant under Section 3.2(d).

**"Severance Event"** means a severance of the Participant's employment with the Employer within the meaning of Code section 457(d)(1)(A)(ii) and Treasury Regulations thereunder. Solely for the purpose of determining whether the Participant is entitled to receive a distribution of his Account pursuant to Section 8.1, a Participant shall be treated as having incurred a severance from employment during any period the Participant is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days.

**"Spouse"** means an individual who is legally married to a Participant as determined under applicable state law (and may include a same-sex spouse). A former spouse is treated as the Spouse, and a current spouse is not treated as the Spouse, to the extent provided under a Domestic Relations Order in a manner consistent with the Code.

**"Treasury Regulation"** means temporary and final regulations published by the Department of the Treasury under the Code.

**"Trust"** means a trust described in Code section 457(g)(1) that is established under the applicable laws of Nevada or any other state laws as agreed to by the Committee. The term "Trust" shall mean and include any trust created pursuant to the Trust Agreement which holds assets of the Plan.

**"Trust Agreement"** means the written agreement between the Employer and the Trustee setting forth the terms and conditions of the Trust and the relative powers of the Employer, the Trustee, and any other party with respect to the Trust, if applicable.

**“Trustee”** means the trustee duly appointed and currently serving under the Trust Agreement.

**“Unforeseeable Emergency”** means severe financial hardship of the Participant or Beneficiary resulting from a sudden and unexpected illness or accident of a Participant or Beneficiary, the Participant’s or Beneficiary’s Spouse, or the Participant’s or Beneficiary’s dependent (as defined in Code section 152 without regard to Code sections 152(b)(1), (b)(2), and (d)(1)(B)), loss of the Participant’s or Beneficiary’s property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, which hardship cannot be relieved by reimbursement or compensation (by insurance or otherwise), liquidation of the Participant’s assets (to the extent the liquidation would not itself cause severe financial hardship), or cessation of elective deferrals under the Plan. Except as provided in this Section, an Unforeseeable Emergency under the Treasury Regulations applicable to this type of plan does not include money for college tuition or purchase of a home.

**“Valuation Date”** means each business day.

[SIGNATURE PAGE FOLLOWS]

**EXECUTION**

IN WITNESS WHEREOF, Washoe County has caused its duly authorized representative to execute this Plan effective as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

Washoe County

Name: \_\_\_\_\_  
[NAME]  
[TITLE]

Date: \_\_\_\_\_