

## INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada  
Acting By and Through Its

State of Nevada Employees' Deferred Compensation Committee  
(Committee)  
1207 S. Carson Street, Suite E  
Carson City, NV 89701

and

City of Sparks  
(Political Subdivision)  
431 Prater Way  
Sparks, NV 89432-0857

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform;

WHEREAS, NRS 287.250 to 287.370, inclusive, authorize the Committee to create a program for deferred compensation, and whereas NRS 287.381 to 287.480, inclusive, authorize the political subdivision to create a program for deferred compensation;

WHEREAS, The Committee has created a deferred compensation program and pursuant to that program has entered into contracts with two investment providers, the Hartford and ING, with whom participants in the program may invest their deferred compensation;

WHEREAS, The investment options and fee and rate structure of the two investment providers in their contracts with the Committee are considered by the Political Subdivision to be generally more favorable than that which would be available to the Political Subdivision if the Political Subdivision were to independently contract with the investment providers;

WHEREAS, the Political Subdivision desires to join the program created by the Committee in order to obtain the more favorable investment options, fees and rates;

WHEREAS, the Committee desires to have the Political Subdivision participate in the Committee's program subject to the same terms and conditions as apply to state employee participants, except for limitations expressly provided below;

WHEREAS, the Committee has secured the consent of the investment providers to enroll the Political Subdivision's employees as participants in the Committee's program subject to the same terms and conditions as apply to state employee participants, except for limitations expressly provided below;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein (the Committee), its officers, employees and immune contractors as defined in NRS 41.0307.

Unless the context otherwise requires, "program" is synonymous with "plan" and "state of Nevada deferred compensation committee plan".

3. CONTRACT TERM. This Contract shall be effective upon approval through December 31, 2012, unless sooner terminated by either party as set forth in this Contract.

4. TERMINATION. This Contract may be terminated without cause by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until 30 days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by either party without consent of the other. The parties expressly agree that this Contract shall be terminated immediately if for any reason federal and/or State Legislature funding ability to satisfy this Contract is withdrawn, limited, or impaired. Benefits accrued by participating employees of the Political Subdivision upon termination of participation in the plan shall remain in the plan until such are otherwise eligible for distribution under the terms of the plan.

5. NOTICE. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.

6. INCORPORATED DOCUMENTS. The parties agree that the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: Independent contract between the State of Nevada Employees' Deferred Compensation Committee and Hartford Life Insurance Company, effective January 1, 2008 through December 31, 2012.

ATTACHMENT B: Independent contract between the State of Nevada Employees' Deferred Compensation Committee and ING Life Insurance and Annuity Company, effective January 1, 2008 through December 31, 2012.

ATTACHMENT C: The State of Nevada Deferred Compensation Committee Plan.

7. ASSENT.

a. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided.

b. Except as agreed otherwise in paragraphs 3) and 4), the Political Subdivision agrees:

1) to participate in the Committee's deferred compensation program subject to all contract terms and conditions as set forth between the State of Nevada Employees' Deferred Compensation Committee and Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, Connecticut 06089, effective January 1, 2008 through December 31, 2012, and as set forth between the State of Nevada Employees' Deferred Compensation Committee and ING Life Insurance and Annuity Company, One Orange Way, Windsor, Connecticut 06096-4774, effective January 1, 2008 through December 31, 2012;

- 2) to be bound by all current and any future State of Nevada Employees' Deferred Compensation Committee "Plan Documents", and "Investment Policies and Procedures";
  - 3) to cooperate with the investment providers and to provide all necessary and appropriate administrative services to enable Political Subdivision employees to participate in the Committee's deferred compensation program; and
  - 4) to provide an appeal process to Political Subdivision employees for denials of requests by Political Subdivision employees to make unforeseen emergency withdrawals from the program and to abide by any guidelines established by the Committee for this purpose.
- c. The Political subdivision agrees that it has made its decision to participate in the program based on its own independent analysis and that neither the State of Nevada nor the Committee are fiduciaries with regard to its decision to participate in the program.
  - d. The Committee agrees to authorize the two investment providers to enroll employees of the Political Subdivision on terms and conditions consistent with this agreement. Execution of this agreement by the Committee constitutes such authorization.
8. INSPECTION & AUDIT.
- a. Books and Records. Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.
  - b. Inspection & Audit. Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.
  - c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.
9. BREACH; REMEDIES. Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for State-employed attorneys.

10. LIMITED LIABILITY. The parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any State breach shall never exceed the amount of funds which have been appropriated for payment under this Contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.

11. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

12. INDEMNIFICATION.

- a. To the fullest extent of limited liability as set forth in paragraph (10) of this Contract, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.
- b. The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying party within 30 days of the indemnified party's actual notice of any actual or pending claim or cause of action. . The indemnifying party shall not be liable to hold harmless any attorneys' fees and costs for the indemnified party's chosen right to participate with legal counsel.

13. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

14. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

15. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

16. ASSIGNMENT. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.

17. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties.

18. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

19. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.

20. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in paragraph (6).

21. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

22. ENTIRE AGREEMENT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the Office of the Attorney General.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

City of Sparks

BY: Geno R. Munte Mayor 2/22/10  
Signature Title Date  
ATTEST: Sandra K. Patterson City Clerk 2/22/10  
Signature Title Date  
[Signature] 2.04.10  
Attorney for Political subdivision (optional) Date

### State of Nevada Employees' Deferred Compensation Program

BY: Tara Hagan Executive Officer 3-9-10  
Signature Title Date

Approved as to form by:

Cameron Anderson 3/16/10  
Deputy Attorney General for Attorney General Date

Amended 10-22-03



## Designated Deferred Compensation Representative(s)

### Responsible Official (authorized signer)

Name Geno R. Martini  
Title Mayor  
E-mail gmartini@cityofsparks.us  
Phone (775)353-2311

Governing Body City of Sparks

### Designated Representatives (list all applicable)

Name Chris Syverson  
Title Human Resources Manager, Plan Administrator  
E-mail csyverson@cityofsparks.us  
Phone (775)353-4022

Name Jeff Cronk  
Title Finance Director  
E-mail jcronk@cityofsparks.us  
Phone (775)353-2301

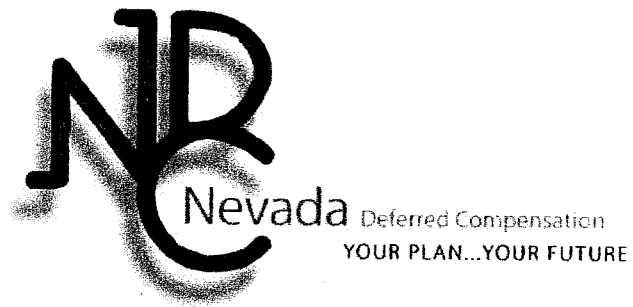
Name Jennifer Lewis  
Title Senior Human Resources Analyst  
E-mail jlewis@cityofsparks.us  
Phone (775)353-4021

Please provide your entity's official mailing address:

City of Sparks Human Resources  
PO Box 857  
Sparks, NV 89432

# **Nevada Public Employees' Deferred Compensation Program**

## **Plan Document**



Revised November 2009



## **PREAMBLE**

This Plan has been adopted pursuant to NRS 287.250 – 287.370, and Title 26 IRS Code, Section 457. Deferred Compensation Plans.

The primary purpose of this Plan is to permit Employees of the Employer to enter into an agreement which will provide for deferral of payment of a portion of their current compensation until death, retirement, termination of employment, or other event, in accordance with the provisions of Section 457 of the Internal Revenue Code, with other applicable provisions of such Code, and in accordance with the Nevada Revised Statute (NRS).

It is intended that the Plan shall qualify as an Eligible Deferred Compensation Plan within the meaning of Sections 457(b) of the Code sponsored by an Eligible Governmental Employer.

Neither the Employer nor the Committee represents or guarantees that any particular federal or state income, payroll or other tax consequence will occur by reason of participation in this Plan. A Participant should consult with his or her own attorney or other representative regarding all tax or other consequences of participation in this Plan.

**ARTICLE I**  
**DEFINITIONS**

**1.1 Plan Definitions**

For purposes of this Plan, the following words and phrases shall have the meaning set forth below, unless a different meaning is plainly required by the context:

**"Adjusted"** means adjusted for the cost of living at the time and in the manner as prescribed under Sections 457(e)(15) of the Code.

**Alternate Payee** means the person who is or was the spouse of the Participant or is the child of the Participant to the extent that such person is entitled to any or all of a Participant's Account under a court order that the Committee has determined to be Plan approved Qualified Domestic Relations Order.

**"Beneficiary"** means any person designated by the Participant to receive an annuity, death benefit, or other benefit under the provisions of this Plan, by reason of such Participant's death.

**"Code"** means the Internal Revenue Code of 1986 as amended and thereafter and any related regulations.

**"Compensation"** means Compensation from the Employer that is currently includible in gross income for federal income tax purposes (i.e., taxable income). Such term also includes any amount excludable from gross income under this Plan or any other plan described in Section 457(b) of the Code and "elective contribution" amounts that are paid out of an Employee's Compensation that are not includible in gross income under Code Sections 125, 401(k), 402(e)(3), 402(h)(1)(B) or 403(b). Includible Compensation does not include any amount excludable from gross income under any pick-up program under Section 414(h)(2) of the Code, or any other amount excludable from gross income for income tax purposes.

**"Committee"** means any individual(s), or Committee appointed by the State to serve as the Plan administrator and trustee over the Plan.

**"Deferred Compensation"** means that portion of an Employee's Compensation, which said Employee has elected to defer in accordance with the provisions of this Plan.

**"Defined Benefit Governmental Plan"** means a pension plan established under Code Section 401(a) in the which the retirement benefits are defined by a set formula.

**"Direct Rollover"** means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee. This includes transfers to all or a portion of the Participant Account to a Defined Benefit Governmental Plan.

**"Distributee"** means a person receiving funds, include a Participant. In addition the Participant's spouse or former spouse who is the Alternate Payee under the Qualified Domestic Relations Order as defined in Code Section 414(p) is a Distributee with regard to the interest of the spouse or former spouse.

**"Eligible Retirement Plan"** means any government 457(b) plan, a 403(b) program, a 401(a) qualified plan, an individual retirement account as described in Code Section 408(a), and an individual retirement annuity as described in Code Section 408(b).

**"Eligible Governmental Employer"** means a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State.

**"Employer "** means the State of Nevada. The term also means any political subdivision or other public entity of the State of Nevada, which enters into an agreement with the Committee to participate in the Plan as described in section 2.1.

**"Eligible Employee"** means any full-time, permanent part-time, seasonal, or temporary employee of the Employer.

**" Minimum Required Distribution Date"** means, according to Code Section 401(a)(9)(c), April 1 of the calendar year following the later of:

- A. the calendar year in which the Participant attains age 70 ½ , or
- B. the calendar year in which the Participant severs employment with the eligible employer, or
- C. As otherwise determined in IRC

**"Normal Retirement Date"** means 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 money purchase pension plan in which the participant also participates if the participant is not eligible to participate in a defined benefit plan), immediate benefits without actuarial or similar reduction because of retirement before some later specified age, and that is not later than age 70 ½ .

**"Participant"** means any individual who performs services for the Employer either as an Employee, who elects to participate in this Plan or who has unpaid benefits due under the Plan, as well as any separated employee or beneficiary who has unpaid benefits due under the Plan.

**"Participant Agreement"** means an agreement filed by an Employee to elect or modify participation in the Plan.

**"Participation Account"** means the bookkeeping account to which there is credited the Participant's Deferred Compensation, together with any interest, dividends, gains, losses, or the like thereon.

**"Plan"** means State of Nevada Deferred Compensation Plan, an Eligible Deferred Compensation Plan.

**“Plan Provider”** means any provider of Deferred Compensation Plan Services contracted by the Committee to provide investment services and/or plan administration, which includes but is not limited to record keeping, participant education and enrollment services.

**“Plan Year”** means the fiscal year during which the Plan becomes effective, and each succeeding year during the existence of this Plan.

**“Qualified Domestic Relations Order (QDRO)”** means a court order, judgment or decree that creates or recognizes the existence of the rights of someone other than the Participant to an interest in the Participant’s Account. The Alternate Payee, referred to as A.P., must be the Participant’s spouse, former spouse, or child.

**“Regulations”** means the Federal Income Tax Regulations including proposed and temporary regulations, as promulgated by the Secretary of the Treasury or the Secretary’s delegate, and as amended from time to time.

**“Severance From Employment”** means the necessary triggering event for distribution within the meaning of Section 402(d)(4)(D) of the Code or on account of the Participant’s death or retirement.

**“Staff”** means the Deferred Compensation Program staff, including the Executive Officer. The Executive Officer, under direction of the Committee, is responsible for the day to day management of the Program.

**“State”** means the State or Commonwealth that is the Employer or the State or Commonwealth of which the Employer is a political subdivision or an agency or instrumentality.

**“Trust”** means the separate Trust that is created under Article III to hold designated assets of the Plan. The Trust shall be used for the exclusive benefit of all Participants and their Beneficiaries.

**“Trustee”** means the Committee, or any individual(s) or committee appointed by the State to serve as trustee of the Plan. **“Unforeseeable Emergency Distribution”** means a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant’s or beneficiary’s spouse, or the participant’s or beneficiary’s dependent (as defined in section 152(a)); loss of the participant’s or beneficiary’s property due to casualty (include the need to rebuild a home following damage to a home not otherwise covered by the homeowner’s insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary.

**ARTICLE II**  
**OPERATION OF PLAN**

**2.1 Participation**

(a) **State Employees** : Any State Employee may elect to become a Participant in the Plan and to defer payment of part of his compensation not yet earned by executing a written Participation Agreement and filing it with the Employer. The Employer shall defer payment of Participant compensation in the amount specified in each Participation Agreement filed with the Employer.

(b) **Other Public Employees** : Political subdivisions and other public entities of the State may participate in the Plan for their Employees by entering into a written agreement with the Committee to abide by the terms and conditions of this Plan document and any administrative rules, policies and procedures established by the Committee. The governing body of each political subdivision or other public entity of the State electing to participate in this Plan must submit written evidence that the entity has appointed the Committee to administer the Plan on behalf of its participating employees.

Participating employers under this paragraph (b) may establish and administer other deferred compensation plans and are solely responsible for ensuring that the deferral limitations of the Code are satisfied if the employer allows an employee to participate in both plans in the same taxable year. If any deferral limitation is exceeded because of such multiple plan participation, the participating employer is responsible for taking corrective action with the other plans first before any corrective action will be required under this Plan.

A participating employer under this paragraph (b) may terminate its participation in the Plan by providing appropriate written notice to the Committee.

**2.2 Participation Agreement**

The Committee shall establish a written Participation Agreement, which shall contain, among other provisions, a provision whereby the Participant specifies:

- (a) that portion of his/her Compensation which is to be deferred.
- (b) his/her investment selections from available options.
- (c) a Beneficiary or Beneficiaries, including one or more contingent Beneficiaries, to receive any benefits which may be payable under this Plan or on the death of the Participant.
- (d) that his salary, wage or other compensation is as set forth in any salary ordinance or otherwise without deductions for amounts deferred under the provisions of this plan.
- (e) that the participant together with his heirs, successors, and assigns, holds harmless the Employer from any liability hereunder for all acts performed in good faith, including acts relating to the investment of deferred amounts and/or the Employee's investment preference hereunder.

(f) a payment option and payment frequency (monthly, quarterly, semi-annually or annually) if applicable. The option and payment frequency selected may be changed at any time unless the participant has purchased an annuitized payment option.

### **2.3 Agreement Effective Date**

If the Participation Agreement is received prior to the 15th of the month, it will take effect on the first payday of the following month. If received on or after the 15th, it will take effect on the first payday of the second month following. Thereafter, during each employment year in which the Employee is a Participant in the Plan, that portion of said Compensation which is specified by the Employee in the Participation Agreement shall be deferred and paid in accordance with the provisions of this Plan.

### **2.4 Amendment of Participation Agreement**

The Participant may revoke his election to participate and may change the amount of Compensation to be deferred, or his investment preference, by signing and filing with the Committee a written revocation or amendment, on a form approved by the Committee. Any such revocation or amendment shall be effective prospectively only, beginning with the first pay period of the subsequent month.

### **2.5 Regular Contributions**

The regular contribution is the amount of compensation, which may be deferred by a Participant subject to the following limitations:

The maximum amount a Participant may defer during a calendar year to this and/or any other eligible deferred compensation plan shall not exceed the lesser of: (i) the applicable dollar amount as set forth in Section 457 (e)(15) of the Code; or (ii) 100% of the Participant's Includible Compensation.

**Pay Period Minimum** – The minimum amount a Participant may defer is \$12.50 per biweekly pay period.

### **2.6 Catch-Up Contributions**

(a) **Pre-Retirement Catch-up Contribution** -A Participant may defer an additional amount under this "catch-up provision", for one or more of the last three calendar years ending prior to, but not including, the year the Participant's elected normal retirement age. The maximum amount a participant may defer under Section 457(b)(3) of the Code each calendar year to this or any other Eligible Deferred Compensation Plan shall not exceed the lesser of: (1) twice the applicable dollar limit as set forth in Section 457(e)(15) of the Code; or (2) the applicable dollar limit as set forth in Section 457(e)(15) of the Code plus any Employer provided compensation eligible for deferral that was not deferred for any prior taxable year which began after December 31, 1978.

(b) **Age 50+ Catch-up Contribution** -A participant who has attained age 50 before the close of any taxable year is eligible to make catch-up contributions in accordance with, and subject to the limitations of, Code Section 414 (v).

(c) In any year where the catch-up contributions under both subsection (a) and subsection (b) apply to a Participant, such Participant may make catch-up contributions in an amount equal to either the amount described in subsection (a) or subsection (b), whichever is greater.

## **2.7 Employer Contributions**

Nothing in this Plan prohibits the Employer from making deposits to a Participant's Participation Account as additional compensation for services rendered, subject to the Participant's regular contribution limits.

## **2.8 Rollover Contributions**

(a) Rollovers will be accepted into the plan, in addition to deferred compensation contributions, to the extent permitted by the Code. The plan will accept direct rollovers and contributions of eligible rollover distributions from qualified plans described in Section 402(c)(4) of the Code.

(b) The election described in subsection (a) also applies to the surviving spouse after the participant's death or a spouse or former spouse who is the alternate payee under a plan approved domestic relations order.

(c) Within a reasonable period or in advance of making an eligible rollover distribution from the plan, the Plan's administrator shall provide a written explanation of rollover eligibility to the recipient as required by Code Section 402(f). The Committee may also require the Employee to certify, either in writing or in any other form permitted under the rules promulgated by the IRS that the contribution qualifies as a Rollover Contribution.

(d) The Plan shall account for rollover contributions, including a separate accounting rollover contributions subject to tax on premature distribution under Code Section 72(t). If it is later determined that all or part of a Rollover Contribution was ineligible to be contributed to the Plan, the Committee shall direct that any ineligible amounts, plus earnings or losses attributed be there to be distributed from the Plan to the Employee as soon as administratively feasible.

## **2.9 Military Service Benefits**

Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to qualified military service will be provided in accordance with Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (Title 38 U.S. Code, Chapter 43, Sections 4301-4333, Public Law 103-353). Subject to the limitations of Code Section 414(u), a participant eligible under this section 2.9 will be permitted to make additional elective deferrals under the plan up to the maximum amount that the participant would have been permitted to make under the Plan during the period of qualified military service.

## **ARTICLE III**

### **INVESTMENT RESPONSIBILITIES**

#### **3.1 Trust**

A Trust is hereby created to hold all assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that certain assets may be held in custodial accounts and contracts described in Section 401(f) of the Code pursuant to Section 457(g) of the Code. The Committee shall determine which assets shall be held in the Trust and which shall be held in a custodial account or contract described in Section 401(f) of the Code(if applicable) and shall notify the participants regarding this issue. Expenses and taxes may be paid from the Trust as provided in section 3.3. The trustee shall be the Committee or such other person, which agrees to act in that capacity there under.

#### **3.2 Investment Powers of Trustee**

The Trustee shall have the powers listed in this Section with respect to the investment of Trust assets, except to the extent that the investment of Trust Assets is directed by Participants, pursuant to sections 3.6 and 3.7.

- (a) To invest and reinvest the Trust without distinction between principle and income in common and preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, certificates of deposit, and contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration and guaranteed interest contracts.
- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Section 457 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent participation in the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (d) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (e) To open and maintain any bank accounts in the name of the Plan, the Employer, or the nominee or agent of the foregoing, including the Administrator, in any banks.
- (f) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

#### **3.3 Taxes and Expenses**



All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust.

### **3.4 Payment of Benefits**

The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Trustee, or by any custodian or other provider so authorized by the Trustee to make such disbursement. The Trustee, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

### **3.5 Investment of Plan Assets Held in Custodial Accounts and Contracts**

All assets of the Plan held in custodial accounts and contracts described in Section 401(f) of the Code shall be invested and reinvested at guaranteed rates of interest or by variable investment options.

### **3.6 Employer's Investment Rights**

The Committee shall direct the Plan Provider to invest amounts equal to the deferred compensation credited to a Participation Account in accordance with his or her requests. The Committee shall establish a default investment allocation under the investment Options established under subsection.

(a) of this section for all Participants and Beneficiaries who do not make an investment allocation request under this section 3.6.(a) The Committee, Staff and its members are not fiduciaries and are not liable for any loss resulting from a Participant's or Beneficiary's exercise or failure to exercise control over his or her individual account provided under the Plan, including but not limited to, any request or failure to request an investment allocation under section this section 3.6.

(b) A Participant or Beneficiary is not a fiduciary by reason of the exercise or failure to exercise control over his or her individual account as permitted under the Plan.

### **3.7 Amendment of Investment Preference**

The Participant may amend his statement of investment preference by filing with the Committee signed amendment on a form approved by the Administrator. Such amendment will, unless specifically stated otherwise, apply only to future amounts deferred under the Plan.

### **3.8 Investment Disclaimer**

Any action by the Committee in investing funds, or approving any such investment of funds, shall not be considered to be either an endorsement or a guarantee of any investment; nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations as provided under the distribution guidelines given below.

### **3.9 Statements**

The Committee will cause to be issued statements periodically to reflect the actual earnings, gains, contributions and losses posted to the Participation Accounts.

## **ARTICLE IV**

### **DISTRIBUTIONS**

#### **4.1 Eligibility**

Code Section 457 and the applicable regulations determine the Participant's eligibility for a distribution and payment option available. Distribution may be taken under any of the following circumstances:

- (a) **Severance from employment;**
- (b) **Participant's death;**
- (c) **Approval of request for unforeseeable emergency withdrawal;**
- (d) **Attainment of age 70 ½**, whether or not the employee is severed from employment.  
However, the Employee may still continue to contribute to the Plan, whether or not they begin a distribution, as permitted under the Code.
- (e) **Subject to certain requirements outlined in section 4.4, in-service de minimis withdrawal.**
- (f) **In-Service Distributions from Rollover Accounts.** If a Participant has a separate account attributable to rollover contributions to the plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

#### **4.2 Distribution**

Distribution must follow the minimum distribution requirements of Sections 401(a)(9) and 457(d) of the Code as they may be amended from time to time. All minimum distributions required to be made under the Plan will be made in accordance with Code Section 401(a)(9). The Code and Regulations will override any inconsistent provisions in this Plan.

Upon becoming eligible in accordance with section 4.1 hereof, distribution is subject to the following guidelines:

- (a) A Participant may elect to commence distribution in accordance with the payment options set forth at section 4.3 hereof.
- (b) A Participant currently receiving non-annuitized distribution may make changes to their elections concerning benefit payment form and timing, with the exception of any minimum distribution requirements.
- (c) If eligibility for distribution is on account of the Participant's death, distribution shall commence in accordance with section 4.8 hereof.
- (d) Notwithstanding any provision of the Plan to the contrary, distribution must commence no later than April 1st following the later of (i) the calendar year in which the Participant attains age

70 ½, unless still employed, or (ii) the calendar year in which the Participant severs employment and shall be made under one of the options provided under section 4.3 and in accordance with Section 401(a)(9) of the Code.

(e) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

#### **4.3 Payment Options**

**Installment Payments** – Upon becoming eligible for a distribution, a Participant may elect to receive so much of his or her account installment payments made at least annually. A Participant may elect to choose a lump sum payment distribution option in addition to the various systematic payout options that are available and may vary the amount or frequency of any such payments. However, at no time may the installment payment period exceed the Participant's life expectancy as determined by Treasury Regulations. The payout options described under this section do not apply to participants that elect to have their distributions annuitized.

#### **4.4 Distribution For Certain Non-Participating Participant**

Notwithstanding any provision of the Plan to the contrary, if the total amount of a Participant's Participation Account under the Plan does not exceed the dollar limit (up to \$5,000) under Code Section 401(a)(11)(A), the Participant may elect to receive (or the Committee may elect to pay to the Participant without the Participant's consent) the total amount in a single sum payment with 60 days of such election only if:

(a) No amount has been deferred under the Plan with respect to such Participant during the two-year period ending on the date of the distribution, and

(b) There has been no prior distribution under the Plan to such Participant to which this section 4.4 applied.

(c) If a participant's account balance does not exceed the dollar limit and the participant has not elected a distribution upon severance from service, the account may be automatically cashed out without the participant's consent. Upon issuance of the Treasury regulations, such amounts will be sent to a designated IRA provider when the participant refuses to take the cash amount or tell the plan where to send the money. The rollover to an IRA occurs only when the cash out amount is greater than \$1,000 (including any rollover contributions).

(d) Rollover contributions are disregarded in applying such cash-out provisions.

#### **4.6 Payment Frequency**

If the Participant has elected a payment option requiring installment payments, the Participant may also elect to have such payment made either monthly, quarterly, semi-annually or annually.

#### **4.7 Distribution Schedule in the Event for the Participant's Death**

In the event of the Participant's death, the full amount credited to the Participant's Participation Account (including earnings and net gain or loss), less any federal or State income tax required to be withheld, shall be distributed according to the following requirements:

- (a) **If distribution has commenced prior to the death of the Participant**, the balance of a Participant's Participation Account shall be paid to the Beneficiary in accordance with the payment option already selected by the Participant so that the remaining distribution will be effected at least as rapidly as under the payment option used before the Participant's death.
- (b) Either 1) the entire interest must be distributed by December 31 of the calendar year containing the 5th anniversary of the participant's death; or 2) must begin by December 31 of the calendar year after the death, payable over the life/life expectancy of the beneficiary.
- (c) A spousal beneficiary may defer distribution no later than the calendar year immediately following the calendar year the deceased Participant would have reached age 70 ½ and may take a distribution under the payment option provided at section 4.3 for a period not exceeding his/her own life expectancy.
- (d) If the Beneficiary fails to make such selection, payments shall be made to the Beneficiary in accordance with section 4.3(b) over a 10-year period.
- (e) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

The plan provider shall process distribution requests immediately upon receipt of all required forms.

#### **4.8 Unforeseeable Emergency Distribution**

Notwithstanding any other provisions of this Plan, a Participant may apply for a lump sum withdrawal of funds from the Plan under certain emergency conditions. The Committee will evaluate the request for conformity with its interpretation of the applicable regulations.

The Participant must satisfy the Committee that all of the following conditions are met before the Committee may authorize the emergency withdrawal:

- (a) Major unexpected and unreimbursable expenses exist that were not foreseeable and are beyond the Employee's control;

- (b) The unforeseeable emergency event involves the Participant or beneficiary, the Participant's or beneficiary's spouse, or the Participant's or beneficiary's dependent (as defined in Code section 152, as permitted for §457(b) plans.
- (c) The financial burden created must be the legal obligation of the Participant;
- (d) All other financial sources, such as insurance payments and attempts to obtain loans, have been exhausted;
- (e) All assets must be liquidated except where liquidation would itself cause severe financial hardship;
- (f) The amount of the requested withdrawal is limited to the amount necessary to meet the financial emergency;
- (g) Participant ceases all deferrals to the Plan for a period of six months from the date of the approved unforeseen emergency; and
- (f) Great financial hardship will occur if the withdrawal is not permitted.

Examples of hardship circumstances include major property loss and catastrophic illness of spouse or dependents.

Withdrawals are not authorized for expenses related to the death or illness of any other family member, or for budgetable expenses such as automobile or college costs, a home down payment, or expenses relative to divorce proceedings.

Any remaining benefits shall be paid upon retirement, termination of employment, or death in accordance with this Article IV.

The decision of the Committee concerning Emergency Withdrawals shall be final as to all Participants.

The Committee may enter into agreements with participating political subdivision employers delegating to such employers the authority to establish a review and appeal process for participants who have been denied emergency distribution requests under this section.

#### **4.9 Rollover of Plan Distributions**

A Distributee may elect, in a manner consistent with Section 457 (e)(16) of the Code and at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except that a

Distributee may not elect a Direct Rollover of a distribution or series of distributions of less than \$200 in a single calendar year. For purposes of applying this section 4.9, the following definitions shall apply:

(a) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance of a participating member's account to the credit of the Distributee except that an Eligible Rollover Distribution does not include:

- (i) 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 his designated beneficiary, or for a specified period of 10 years or more;
- (ii) Any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (i) The portion of any distribution that is not includible in a Distributee's gross income; or
- (ii) any corrective distribution of excess contributions and any corrective distribution of excess aggregate contributions and income allowable to such corrective distributions;
- (iv) any unforeseeable emergency distribution under section 4.8.

(b) **Eligible Retirement Plan.** An Eligible Retirement Plan as described in Section 402(c)(8)(B) is an individual retirement account described in Code Section 408(a), an annuity plan described in Code Section 408 (b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a governmental entity described in Code Section 457(e)(1)(A), an annuity contract described in Code Section 403(b) that accepts the Distributee's Eligible Rollover Distribution.

## **ARTICLE V BENEFICIARY**

### **5.1 Designation**

Each Participant has the right, by written notice filed with the Plan Provider to designate one or more beneficiaries to receive any benefits payable under this Plan in the event of the Participant's death prior to the complete distribution of benefits. The Participant accepts and acknowledges that he has the burden for executing and filing, with the Plan Provider, a proper beneficiary designation form.

The form for this purpose shall be provided by the Plan Provider. It is not binding on the Plan Provider until it is signed, filed with the Plan Provider by the Participant, and accepted by the Plan Provider.

If no such designation is in effect upon the Participant's death, or if no designated beneficiary survives the Participant, the beneficiary shall be the estate.

If no estate executor or administrator is appointed and qualified within 120 days after the Participant's death, the payment may be made first to a surviving spouse, second, to a surviving child or children, and third, to a surviving parent or parents.

## ARTICLE VI

### NON-ASSIGNABILITY

#### 6.1 Non-Assignability

Neither the Participant nor the Participant's beneficiary, nor any other designee, shall have any right to commute, sell, assign, pledge, hypothecate, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and nontransferable.

Except to the extent otherwise provided by law, no payments shall be subject to attachment, garnishment or execution, or transferable in the event of bankruptcy or insolvency.

#### 6.2 Domestic Relations Orders

(a) **Allowance of Transfers:** To the extent required under final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, or child of the Participant. As permitted under Code Section 414(p)(11), the Plan shall recognize and give effect to domestic relations orders that have been approved by the Plan as such in accordance with Plan procedures. Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the spouse, former spouse, or child who shall be entitled to make investment selections with respect thereto in the same manner as the Participant.

(b) **Distribution and Tax Withholding:** Amounts segregated for the accounts of alternate payees pursuant to a Plan approved domestic relations order shall be available for immediate distribution to the alternate payee with the same distribution options as available to as other plan participants. The Alternate Payee will be responsible for tax withholdings and distributions will be includible in the recipient's gross income when paid.

(c) **Release from Liability to Participant:** The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse, or child pursuant to subsection (a). No such transfer shall be effectuated unless the Employer or Administrator has been provided with satisfactory evidence that the Employer and Administrator are released from any further claim by the Participant with respect to such amounts. The Participant shall be deemed to have released the Employer and Administrator from any claim with respect to such amounts, in any case in which (i) the Employer or Administrator has been served with legal process or otherwise

joined in a proceeding relating to such transfer, (ii) the Participant has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process in such action or by mail from the Employer or Administrator to the Participant's last known mailing address, and

(iii) the Participant fails to obtain an order of the court in the proceeding relieving the Employer or Administrator from the obligation to comply with the judgment, decree, or order.

**(d) Participation in Legal Proceedings:** The Employer and Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in subsection (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Participant's spouse, former spouse, or child (including the legal representatives of the spouse, former spouse, or child), or to a court.

## **ARTICLE VII**

### **PLAN TRANSFERS**

#### **7.1 Plan Transfers**

Code Sections 457, 401(a), 403(b), and IRAs and the applicable regulations permit transfers of Plan interests when the Participant changes employers.

#### **7.2 Transfers In**

The full value of a Participation Account may be accepted from another Eligible Retirement maintained by another employer and credited to the Participant's Participation Account under this Plan, if:

- (a) The Participant has severed employment with that employer and has become an Employee;
- (b) The other employer's plan provides that such transfer can be made.

As it deems necessary, the Committee may require such documentation from the predecessor plan to effect the transfer, to confirm that such plan is an Eligible Retirement Plan within the meaning of Code Sections 457, 401(a), 403 (b), and IRAs 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 agrees to hold such other assets under the Plan.

Any amounts transferred that had been deferred during prior calendar years will not be subject to current calendar year deferral limitations.



### **7.3 Transfers Out**

The full value of a Participation Account may be transferred to another Eligible Retirement Plan maintained by another employer, if:

- (a) The Participant has severed employment with the Employer and become an employee of the other employer;
- (b) The other employer's plan provides that such transfer will be accepted; and
- (c) The Participant and the employer have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer.

As it deems necessary, the Committee may require such documentation from the other plan to affect the transfer, to confirm that such plan is an Eligible Retirement Plan within the meaning of Code Section 457 and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Code Section 457, 401(a), 403(b), and IRAs and the applicable regulations.

### **7.4 Availability of Plan Amounts to Purchase Service Credits**

Subject to rules established by the Committee and as permitted by Section 457(e)(17) of the Code, a Participant may elect to have all or any portion of the Participation Account paid via a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in Section 414(d) of the Code) for the purchase of permissive service credit (as defined in Section 415(n) of the Code) or for repayments under Section 415(k)(3) of the Code.

## **ARTICLE VIII**

### **ADMINISTRATION AND ACCOUNTING**

#### **8.1 Administration by Employer**

This plan shall be administered by the Committee, which shall prescribe such forms, and adopt such rules and regulations as are necessary to carry out the purposes of the Plan. The Committee may employ investment counsel to provide advice concerning categories of investment, investment guidelines and investment policy, provided, however, that the advice or recommendations of any such investment counsel shall not be binding on the Committee, which shall make the final determination concerning investment categories, investment guidelines and policies.

The Committee may contract with a financially responsible independent contractor to administer and coordinate the Plan under the direction of the Employer. The Administrator shall have the right to designate a Plan Coordinator or other party of its choice to perform such services under this agreement as may be mutually agreed to between the Administrator and the Plan Coordinator or other party. Notwithstanding any other provisions to the contrary, the Administrator agrees that it shall be solely

responsible to the Committee for any and all services performed by a subcontractor, assignee, or designee under this agreement.

## **8.2 Administrative Costs**

The Committee shall determine, in a manner deemed fair and equitable, the administrative costs associated with the withholding of Deferred Compensation amounts pursuant to this plan or in making investments or otherwise administering or implementing the Plan. The Committee may withhold or collect, or have withheld or collected such costs in such a manner as it deems equitable either (1) from the compensation deferred pursuant to the Plan, the income produced from the compensation deferred pursuant to the Plan, the income produced from any investment, whether or not augmented, or (2) from the organization receiving such investment where required by law to collect there from or, if not so required, where mutually satisfactory to such organization.

## **8.3 Paperless Administration**

To the extent permitted by law, regulation or other guidance from an appropriate regulatory agency, the Administrator, Trustee, Employer or any other party may provide any notice or disclosure, obtain any authorization or consent, or satisfy any other obligation under this plan through the use of media other than paper. Such alternative media may include but is not limited to, electronic or telephonic media.

# **ARTICLE IX**

## **AMENDMENTS**

### **9.1 Right to Amend, Modify and Terminate**

The Committee may at any time modify or terminate the Plan by notifying Participants of such action. The Committee shall not have the right to reduce or affect the value of any Participant's Participation Account or any rights accrued under the Plan prior to modification or termination.

### **9.2 Conformation**

The Committee shall amend and interpret the Plan to the extent necessary to conform to the requirements of Code Sections 457 and any other applicable law, regulation or ruling, including amendments that are retroactive. In the event the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Code Section 457, the Committee shall correct such inconsistency within the period provided in Code Section 457(b), and deemed inconsistent with Code Section 401(a), the Committee shall correct such inconsistency within the period provided.

### **9.3 Plan Termination**

In the event of the termination of the Plan, distribution of benefits shall be made to Participants and beneficiaries pursuant to the distribution guidelines in Article IV or the transfer provisions of Article VII.

**ARTICLE X**  
**EXCLUSIVE BENEFIT**

**10.1 Exclusive Benefit**

All amounts of compensation deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in trust or under custodial accounts and contracts described in Section 401(f) of the Code. Except as may otherwise be permitted or required by law, no assets or income of the Plan shall be used for, or diverted to, purposed other than for the exclusive purpose of providing benefits for Participants and their Beneficiaries or defraying reasonable expenses of administration of the Plan.

**10.2 Unclaimed Accounts**

As provided in Nevada Revised Statutes Chapter 120A, an account that remains unclaimed for three years after any benefit becomes payable or distributable to the Participant or Beneficiary shall be presumed abandoned and treated as provided in the Act. The Trustee's good faith efforts to comply with the Act shall be deemed consistent with the trust provisions in Article III of the Plan.

**ARTICLE XI**  
**MISCELLANEOUS**

**11.1 Retirement System Integration**

Benefits payable by, and deductions for Employee contributions to, any retirement system of the Employer shall be computed without reference to amounts deferred pursuant to this Plan.

**11.2 Employment**

Neither the establishment of the Plan nor any modification thereof, nor the establishment of any account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer except as herein provided; and, in no event, shall be terms or employment of any Employee be modified or in any way affected hereby.

**11.3 Successors and Assigns**

The Plan shall be binding upon and shall insure to the benefits of the Employer, its successors and assigns, all Participants and Beneficiaries and their heirs and legal representatives.

**11.4 Written Notice**

Any notice or other communication required or permitted under the Plan shall be in writing, and if directed to the Committee shall be sent to the designated office of the Committee and, if directed to a

Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at his last known address as it appears on the Committee record.

#### **11.5 Total Agreement**

This Plan and the Participation Agreement, and any subsequently adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant.

#### **11.6 Gender**

As used herein the masculine shall include the neuter and the feminine where appropriate.

#### **11.7 Controlling Law**

This Plan is created and shall be construed, administered and interpreted in accordance with Section 457 of the Code and the regulations there under and under the laws of the State of Nevada as the same shall be at the time any dispute or issue is raised. If any portion of this Plan is held illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder shall be unaffected.

IN WITNESS WHEREOF, the Employer has executed this Plan document this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

NEVADA PUBLIC EMPLOYEES' DEFERRED COMPENSATION PROGRAM

By: \_\_\_\_\_ TARA HAGAN, EXECUTIVE OFFICER



# **Nevada Public Employees Deferred Compensation Program**

## **Statement of Investment Policy**

***Amended February 2009***

**Adopted March 2006**

## **Section 1- Introduction**

The Nevada Public Employees Deferred Compensation Committee (Committee) hereby adopts this Statement of Investment Policy (Policy) for the Nevada Public Employees Deferred Compensation Program.

The Committee shall deliberate the status of the Program in open forum, at least quarterly, conduct a review of the investment performance of options and take action as appropriate.

### **Objectives of the Program**

The Program is a long-term retirement savings vehicle and is intended as a source of supplemental retirement income for eligible participants. The available options cover a range of investment risk and reward which the Committee deems appropriate for this retirement savings program. The Program is a voluntary, participant-directed deferred compensation plan. As such, Participants bear the ongoing responsibility for deciding the amount of current compensation to defer and the selection of investment allocation and options.

This Statement of Investment Policy serves the following purposes:

- To define the Program objectives and link these to the Program investment structure;
- To establish an investment program that will allow Participants the opportunity to structure an investment strategy that meets their individual return objectives and risk tolerances;
- To document the responsibilities of Program fiduciaries and non-fiduciaries;
- To ensure that a broad range of investment options are offered to Participants;
- To define the investment categories offered and establish investment objectives and guidelines for each category;
- To determine appropriate benchmarks/performance standards;
- To set guidelines for monitoring investment performance ;

- To establish guidelines for changes to the investment options , including actions that may be taken upon failure to meet performance standards

## **Selection of Investment Options**

The Program offers the following investment options:

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Guaranteed Option(s)
Fixed Income
Balanced Fund(s)
U.S. Equity
International Equity
Global Equity
Socially Responsive Fund(s)
Asset-Allocation Portfolios

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Each investment option offered under the Program shall:

- Assess asset management fees that are reasonable and consistent with the industry;
- Operate in accordance with its prospectus or “fact sheet”; and

The Committee, in its sole discretion, may add or delete investment options/categories.

## **Section 2- Investment Categories:**

### **Objectives, Guidelines & Performance Standards**

#### **Guaranteed Option(s)**

##### **Objective**

The objective of this investment category is to preserve principal and provide a stable, competitive rate of return. A fund in this category may invest in fixed income instruments, including those of the US Government and its agencies, corporations, mortgage- and asset-backed securities, collateralized, emerging market, high yield, and preferred stock securities.

Emerging market and high yield securities shall represent a small percentage of total assets, in line with the objective to preserve capital.

### ***Performance Standards***

- To provide a competitive rate of interest consistent with the marketplace of similar products.

## **Fixed Income**

### **Objective**

The objective is to invest in bonds, including those issued by the US and foreign governments, corporate securities (primarily investment grade), as well as mortgage- and asset-backed securities.

### ***Performance Standards***

- Actively managed accounts should exceed the return of the Barclays Capital Aggregate Bond Index and the median return of the fixed income fund universe over a market cycle, or generally a period of 3 to 5 years.
- Index funds should track the performance of the stated index.
- Risk, as measured by the standard deviation of quarterly returns, shall be consistent with that of the Barclays Capital Aggregate Bond Index and the fixed income fund universe, as appropriate

## **Balanced**

### **Objective**

The objective of this investment category is to invest in stocks, bonds and cash to provide capital appreciation and income with less volatility than an all-stock fund. Investment returns are expected to be derived from a combination of capital appreciation and dividend and interest income.

### ***Performance Standards***

- Actively managed accounts should exceed the return of the S&P 500 Index and the Barclays Capital Aggregate Bond Index, allocated the same as the option selected; and the median of the balanced fund universe over a market cycle, or generally a period of 3 to 5 years.



- Risk, as measured by the standard deviation of quarterly returns, shall be consistent with that of the composite index and the balanced fund universe., as appropriate

## **U.S. Equity**

### **Objective**

The objective of this investment category is to invest in common stock of primarily US companies of varying capitalizations.

### ***Performance Standards***

- Actively managed funds shall exceed the return of the stated Index and median return of the appropriate equity fund universe over a market cycle, or generally a period of 3 to 5 years.
- Index funds should track the performance of the stated index.
- Risk, as measured by the standard deviation of quarterly returns, shall be consistent with the stated index and the appropriate equity fund universe.

## **Global Equity**

### **Objective**

The objective of this investment category is to invest primarily in the common stock of companies located within and outside the United States. Investment returns are expected to be derived primarily from capital appreciation.

### ***Performance Standards (Net of fees)***

- Actively managed funds shall exceed the return of the MSCI World Index and the median return of the global equity fund universe over a market cycle, or generally a period of 3 to 5 years.
- Risk, as measured by the standard deviation of quarterly returns, shall be consistent with that of the MSCI World Index (net) and the global equity fund universe.

## **International Equity**

### **Objective**

The objective of this investment category is to invest primarily in the common stock of companies located outside the United States within the Europe, Australia and the Far East (EAFE) Index.

### ***Performance Standards***

- Actively managed funds shall exceed the return of the MSCI EAFE Index (net of dividends) and the median return of the international equity fund universe over a market cycle, or generally a period of 3 to 5 years.
- Index funds should track the performance of the stated index.
- Risk, as measured by the standard deviation of quarterly returns, shall be consistent with that of the MSCI EAFE Index (net) and the international equity fund universe.

## **Socially Responsive Option(s)**

### **Objective**

The objective of this investment category is to invest in bonds and/ or stocks in companies determined by the fund manager to meet certain social criteria which may include environmental, labor relations, diversity, health or other issues.

### ***Performance Standards***

- To exceed the return of a market index applicable to the investment style of the fund and median return of the universe applicable to a fund's investment style over a market cycle, or generally a period of 3 to 5 years.

## **Asset Allocation Portfolios**

### **Objective**

The objective of this investment category is to invest in an allocation of fixed income and equity instruments according to certain risk characteristics.

### **Lifestyle/cycle Portfolios**

- Conservative funds are weighted in favor of fixed income securities to provide a less risky investment option to participants in or nearing retirement, or with a low tolerance for volatile investment performance.
- Moderate funds seek a balance between fixed income and equity securities to provide potential for higher returns, while seeking to limit the volatility of overall fund performance.
- Aggressive funds are weighted in favor of equities to provide potential for high returns, but through increased risk, to participants with long investment horizons or with a high tolerance for risk. Investment returns may be derived from a combination of current income and capital appreciation.

### **Target Date Funds**

- Another approach to asset allocation investing is to establish a fund with a targeted “maturity date” and to reallocate the investments over time to be more conservative. In this case, a fund may start with a greater allocation to equities when first established, and over time, the allocation will reduce equity exposure to a balanced portfolio, then to primarily fixed income. In this type of fund offering, the participant would select the fund that has its “maturity date” similar to his or her own investment horizon, often the participant’s retirement age

### ***Performance Standards***

- To exceed the return of a composite index over a full market cycle, or generally a period of 3 to 5 years.

### **Section 3- Reporting and Monitoring Procedures**

The Committee will review the Program quarterly, including review of the following:

- Current trends and developments in the capital markets and investment management community (market review);
- Overall participation in the investment options maintaining the right to remove an option with limited use;
- Personnel changes in the investment management staff related to each investment option (organizational review), as well as changes in ownership of the organization (i.e. merger, acquisition activity and regulatory issues);
- Investment process consistency;
- Compliance with stated investment guidelines (review of the holdings and characteristics of each investment option);

### **Investment Fund Evaluation**

The Committee, in its discretion, may conduct evaluations of investment funds at any time.

The Committee may place a fund on the Watch List, initiate a formal fund review, terminate a fund, or “freeze” a fund to new contributions for reasons which may include:

1. Failure to meet the performance standards;
2. Personnel changes or concerns;
3. Change in ownership or control;
4. Violation of an SEC rule or regulation;
5. Any other issue the Committee deems significant

### **Watch List/Formal Fund Review**

When a fund has been placed on the Watch List it will undergo a formal review. The Committee shall conduct a detailed evaluation of the fund, its operations, and its performance. During the review, the Committee: 1) may suspend contributions to the fund from existing

participants and 2) may close the fund to new enrollers. Upon completion of the evaluation, the Committee may continue the fund under formal review status, remove the fund from formal review, or terminate the fund.

### **Suspension of Contributions / Termination of Fund**

When the Committee suspends contributions or terminates a fund:

1. The Committee shall notify the Provider that either contributions are being suspended from a fund or a fund is being terminated;
2. The Committee shall notify fund Participants within a reasonable time (30 days) of action taken.

### **Section 4- Administrative Policies**

The Program will be administered and record-kept as authorized by NRS287•330.

#### **Program Design and Administration**

The 457 Deferred Compensation Program is governed by the rules and requirements specified in the Program Document. The Internal Revenue Service (IRS) has established rules that apply to contributions and their limitations.

#### **Review of Administrator Performance**

The Committee shall conduct annual reviews of the provider/recordkeeper to evaluate their performance, revenue sharing and participant fees as it relates to agreed upon standards.

#### **Communication To Participants**

Information about investment options will be made available to Participants to support making informed investment choices. The Program shall provide quarterly statements of fund performance to Participants.

Investment option prospectuses or fact sheets will be provided to Participants by the service provider(s), on request.

The Program is a voluntary, participant-directed deferred compensation plan. As such, Participants bear the ongoing responsibility for deciding the amount of current compensation to defer and selection of investment allocation and options.

#### **Section 4- Parties Responsible for Management and Administration of the Program's Investments**

The Committee will act in the sole interest of the Program participants and beneficiaries, for the exclusive purpose of assisting public employees with achieving their retirement goals through a supplemental retirement program. The safeguards to which a prudent investor would adhere must be observed. Furthermore, the Committee must comply with the regulations set forth in this Policy, the Internal Revenue Code, and other governing rules and regulations that relate to the administration and investment of the Plan assets.

Several entities are responsible for various aspects of the management and administration of the Program's investments. The entities and their responsibilities include, but are not limited to:

##### **Committee**

The tasks for which the Committee is responsible include:

- Hiring the executive officer, deferred compensation providers, and/or consultants.
- Establishing and maintaining the Investment Policy.
- Selecting investment options.
- Periodically evaluating the Program's investment performance, the costs to Program participants, and recommending investment option changes.
- Conducting necessary audits (fiduciary and financial), as appropriate

### **Investment Consultant**

The Investment Consultant is responsible for, among other things, reporting to the Committee and Staff on various aspects of the Program's investments and the performance of the Program's investment managers, meeting with the Committee to review investment performance and program structure, making recommendations regarding investment objectives, guidelines, and this Policy, assisting in the Program's compliance with this Policy, and reporting to the Committee on current investment trends and issues. In addition, the Investment Consultant shall provide annual recommendations for the Asset Allocation Funds.

The Investment Consultant acknowledges that it is a fiduciary to the Program and shall at all times act in a fiduciary capacity with respect to those services for which it exercises discretion. The Investment Consultant further acknowledges that it is a fiduciary with respect to these services that consist of investment advice that satisfies the ERISA definition of such service being fiduciary in nature. Accordingly, the Investment Consultant is under a duty to exercise a skill greater than that of an ordinary person, and the manner in which advice is handled or services are rendered will be evaluated in light of the Investment Consultant's superior skill.

### **Provider/Recordkeeper**

The Provider/Recordkeeper will be responsible for performing the following in conjunction with Program and statutory provisions:

- Complying with all applicable rulings, regulations, and legislation.
- Notifying the Program of change (deterioration or improvement) in Provider's financial condition
- Acting in accordance with the provisions of trust and/or custodial agreements and annuity and other insurance contracts.

- Reporting financial transactions and preparing periodic summaries of transactions, asset valuations, and other related information as deemed appropriate by the Committee
- Updating changes in the Program.
- Educating and communicating the investment options offered in the Program.
- Accepting and initiating employee investment direction.
- Enrolling new employees in the Program.
- Maintaining and updating participant accounts.
- Preparing activity reports.
- Preparing participant statements.
- Marketing the Program.

## **Section 5- Self-Directed Brokerage Services**

The self-directed brokerage account is offered to Participants as a supplemental investment option. The self-directed brokerage account is intended for participants that are interested in a wider array of investment options and are willing to accept the additional risks associated with those options.

The Committee has no responsibility for selecting, monitoring or evaluating the investment options available through the self-directed brokerage account. Participants will have sole discretion in regards to the investment options they select through the brokerage account.

The Program's service providers are responsible for providing participants with enrollment and educational materials for them to decide whether or not a self-directed brokerage account is suitable. The service providers are to provide all necessary materials in connection with participant inquiries regarding the establishment of the brokerage account rules and restrictions.

Under the self-directed brokerage account the Participant will be responsible for the on-going research, trading and risk management responsibilities associated with their specific



investment choices. The maximum allowed cumulative transfer from a Participant's account is limited to 50% of a Participant's total account value in the Program. Account balances must have a minimum of \$5,000, with an initial transfer of at least \$2,500 and subsequent transfers in \$1,000 increments.

#### **Section 6- Participant Advisory Services**

The Program may provide participant advisory services.

The objective of advisory services is to offer asset allocation alternatives and recommendations with varying risk and reward. Advisory services are non-discretionary with the Participant solely responsible for determining whether or not to follow the recommendations.

#### **Section 7- Excessive Trading Policy**

In the absence of an industry standard excessive trading guideline, as well as part of its fiduciary duty, the Committee has adopted its current service providers' Excessive Trading Policies. The Policies are used to protect the interest of the Program's long-term investors from potential adverse impact of excessive trading. The purpose is to eliminate excessive trading as well as warn individuals who engage in frequent trading that such activity may be detrimental.

Jim Gibbons  
Governor



Tara Hagan  
Executive Officer

COMMITTEE  
Brian L. Davie, Chair  
LCB

James Barnes, Vice Chair  
RETIRED

Andrew MacKay  
NTA

Diane Comeaux  
DCFS

Rex Reed  
DOC

Cameron Vandenberg  
Deputy Attorney General

## Nevada Public Employees' Deferred Compensation Program

Dear Mr. Syverson,

Our records indicate City of Sparks is a member of the Nevada Public Employees' Deferred Compensation Program. Please find the enclosed information (available on the CD-ROM) with regard to the Nevada Deferred Compensation Program.

We are requesting the City of Sparks complete and submit the attached Interlocal Agreement, Contact/Designated Representative List and the Program Certification. In addition, the CD-ROM contains the most recent versions of the Plan's documents. Please note any amendments to the documents below will be sent via e-mail and available on the Program's website. For additional information these items, please see below:

- Interlocal Contract Agreement
  - Agreement coincides with the 2008 – 2012 investment provider contract period. Please note this agreement needs to be signed by an authorized signer and return to the Deferred Compensation office (three original copies).
- Contact/Designated Representative
  - Please complete and return to the Deferred Compensation office.
- Program Certification
  - Please submit to the Deferred Compensation office.
- Plan Document
- Investment Policy
- Administrative Manual
- Plan Summary

Thank you for your participation in the Program. We look forward to working together to assist government employees in planning and saving for retirement. Should have additional questions or concerns, please contact our office at 775.882.0760.

Thank you,

Tara Hagan