

Nevada Public Employees' Deferred Compensation Program

Plan Document



Revised August 2010

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 or domestic partner 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” 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, including a Participant. In addition the Participant’s spouse, former spouse or domestic partner 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, former spouse or domestic partner.

“Domestic Partner” means a domestic partner as defined in NRS 122A.030.

“**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 an A.P., must be the Participant’s spouse, domestic partner, 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, domestic partner 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 Participant Agreements Effective Date

A Participant may defer Compensation payable in the calendar month during which the Eligible Individual first becomes a Participant if the Participation Agreement providing for such deferral is entered into on or before the first day of the month in which the Compensation is paid or becomes available. Notwithstanding subsection the above, a new Employee who is also an Eligible Individual may become a Participant and defer Compensation payable in the calendar month during which he first becomes an Employee if a Participation Agreement providing for the deferral is entered into on or before the first day on which he performs services for the Employer.

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 will be effective as early as administratively practicable, but not earlier than the first day of the following calendar month in which the Compensation is paid or made available.

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, (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, or (iii) other provisions in Section 457(b), 401(a)(9) or such Code that would discontinue or suspend the minimum distribution requirement

(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 411(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 unreimburseable 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, domestic partner 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 or domestic partner, 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, domestic partner 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, domestic partner 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, domestic partner, 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, domestic partner, former spouse, or child (including the legal representatives of the domestic partner, 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