

OFFICIAL RECORD

Requested By:
DC/HUMAN RESOURCES

Assessor's Parcel Number: N/A

Date: JULY 31, 2012

Recording Requested By:

Douglas County - NV
Karen Ellison - Recorder
Page: 1 Of 38 Fee: 0.00
BK-0712 PG- 7666 RPT: 0.00



Name: DARCY WORMS, HUMAN RESOURCES

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

INTERLOCAL CONTRACT #2012.159

(Title of Document)

INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

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

Nevada Public Employees' FICA Alternative Deferred Compensation
Committee
(Committee)

100 N. Stewart Street, Suite 210
Carson City, NV 89701

and

Douglas County
(Political Subdivision)
P.O. Box 218
Minden, NV 89423

[Handwritten Signature]
TED THIRAN
CLERK

2012-259
2012 JUL 31 AM 8:41

FILED

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 FICA Alternative deferred compensation, and whereas NRS 287.381 to 287.480, inclusive, authorize the political subdivision to create a program for FICA Alternative deferred compensation;

WHEREAS, The Committee has created a FICA Alternative 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 FICA Alternative deferred compensation;

WHEREAS, The stability of principal investment option(s) 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 stability of principal 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 FICA Alternative Deferred Compensation Committee Plan Document

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 FICA Alternative 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' FICA Alternative Deferred Compensation Committee "Plan Documents.
- 3) to cooperate with the investment provider(s) and to provide all necessary and appropriate administrative services to enable Political Subdivision employees to participate in the Committee's FICA Alternative 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 withdraws 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 investment provider(s) 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 prevail-

ing 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.

Douglas County
(Political Subdivision)

BY: [Signature]
Signature

Chairman, Board of Commissioners 6/21/12
Title Date

R. M. [Signature]
Attorney for Political subdivision

June 21, 2012
Date

Nevada Public Employees' Deferred Compensation Program

BY: [Signature]
Signature

Chairman 6-27-12
Title Date

Approved as to form by:

[Signature]
Deputy Attorney General for Attorney General

July 3, 2012
Date

Amended 5-14-09

A



BK- 0712
PG- 7673
07/31/2012



BK- 0410
PG- 4755
04/26/2010

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

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

STATE OF NEVADA
EMPLOYEES' DEFERRED COMPENSATION COMMITTEE
209 E. MUSSER STREET, #304
CARSON CITY, NV 89701
TELEPHONE: (775) 684-0273
FAX: (775) 695-0275

and

THE HARTFORD FINANCIAL SERVICES GROUP, INC.
JAMIE ORL, VICE PRESIDENT
200 HOPMEADOW STREET
SIMSBURY, CT 06089
TELEPHONE: (860) 843-5802
FAX: (860) 843-

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and
WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;
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 the Nevada State Board of Examiners.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS §41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.
3. **CONTRACT TERM.** This Contract shall be effective from January 1, 2008 to December 31, 2012, unless sooner terminated by either party as specified in paragraph (10).
4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. 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 specified above.
5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

- ATTACHMENT A:
- ATTACHMENT B:
- ATTACHMENT C:
- ATTACHMENT D:

- STATE SOLICITATION (RFP # DEF457E) (Incorporated by Reference)
- CONTRACTOR'S RESPONSE (Incorporated by Reference)
- SCOPE OF WORK
- INSURANCE ACORD

Approved 03/08/02
Revised 01/04

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph (5) at no cost to the State of Nevada. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. **ASSENT.** 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 specified.

8. **TIMELINESS OF BILLING SUBMISSION.** The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a state claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a state claim and that this amount will be deducted from the state claim payment due to the Contractor.

9. **INSPECTION & AUDIT.**

a. **Books and Records.** Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, 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.** Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, 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 of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, 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. All subcontracts shall reflect requirements of this paragraph.

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 the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. 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.

10. **CONTRACT TERMINATION.**

a. **Termination Without Cause.** Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

b. **State Termination for Nonappropriation.** The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. **Cause Termination for Default or Breach.** A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

- v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:
- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
 - iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph (21).
11. REMEDIES. 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, without limitation, 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. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.
12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.
13. 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.
14. INDEMNIFICATION. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.
15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor 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 the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with

respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

	Contractor's Initials	
	YES	NO
1. Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	ji
2. Will the Contracting Agency be providing training to the independent contractor?	_____	ji
3. Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	ji
4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	ji
5. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	ji
6. Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	ji
7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	ji

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The State shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract.

Any insurance or self-insurance available to the State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

Workers' Compensation and Employer's Liability Insurance

- 1) Contractor shall provide proof of worker's compensation insurance as required of Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.
If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.
- 3) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a fully executed "Affidavit of Rejection of Coverages Under NRS 616B627 and NRS 617.210" form.

Commercial General Liability Insurance

- 1) Minimum Limits required:

\$2,000,000	General Aggregate
\$1,000,000	Products & Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence
- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Business Automobile Liability Insurance

- 1) Minimum Limit required: ~~\$1,000,000~~ Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).
The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Professional Liability Insurance

- 1) Minimum Limit required: ~~\$5,000,000~~ Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the contract
- 3) Discovery period: Three (3) years after termination date of contract.
- 4) A certified copy of this policy may be required.

Umbrella or Excess Liability Insurance

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

Commercial Crime Insurance

Minimum Limit required: ~~\$1,000,000~~ Per Loss for Employee Dishonesty
This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

Performance Security

Amount required: ~~\$ waived~~
Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the State of Nevada, only.

- 1) The security shall be deposited with the contracting State agency no later than ten (10) working days following award of the Contract to Contractor.
- 2) Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

General Requirements:

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, *The State of Nevada, its officers, employees and immune contractors* as defined in NRS41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the Risk Management Division.
- e. **Policy Cancellation:** Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address shown below.
- f. **Approved Insurer:** Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
 - 2) Currently rated by A.M. Best as "A- VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

- 1) **Certificate of Insurance:** The Acor 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per **General Requirements**, Subsection a above.
- 3) **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its subcontractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

Mail all required insurance documents to the Contracting Agency identified on page one of the contract.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. 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.



19. 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 nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. 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 the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

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

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.



b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally coding and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multicentury formulas and data values and date data interface values that reflect the century. Pursuant to NRS 41.0321, the State is immune from liability due to any failure of any incorrect date being produced, calculated or generated by a computer or other information system.

27. 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. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. 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, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

29. ENTIRE CONTRACT 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 and approved by the Office of the Attorney General and the State Board of Examiners.

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

Jamie Ohl 10/21/2007 Vice President
Independent Contractor's Signature Date Independent Contractor's Title

Marjorie Keating 10/30/07 Comm. Member
Signature Date Title

Signature Date Title

Signature Date Title

[Signature] APPROVED BY BOARD OF EXAMINERS

Approved as to form by: On 11-13-07
(Date)

Kate S. Armstrong On 10/30/07
Deputy Attorney General for Attorney General (Date)



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PG- 7681

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PG- 4763

0762600 Page: 31 Of 39 04/26/2010

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

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

State of Nevada Deferred Compensation Committee
209 E. Musser Street, Room 304
Carson City, NV 89701

And

ING Life Insurance and Annuity Company
One Orange Way
Windsor, CT 06095-4774

RECEIVED

NOV 09 2007

DEPARTMENT OF ADMINISTRATION
OFFICE OF THE DIRECTOR
BUDGET AND FINANCIAL DIVISION

NOV 20 AM 11:15

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and
WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;
NOW, THEREFORE, in consideration of the aforesaid promises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.

2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS §41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.

3. **CONTRACT TERM.** This Contract shall be effective from 01 - 01 - 2008 subject to Board of Examiners' approval (anticipated to be) to 12-31-2012, unless sooner terminated by either party as specified in paragraph (10).

4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. 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 specified above.

5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

ATTACHMENT A: STATE SOLICITATION (RFP # DEF 457) and ATTACHMENTS (incorporated by reference)

ATTACHMENT B: CONTRACTOR'S RESPONSE (incorporated by reference)

ATTACHMENT C: SCOPE OF WORK

ATTACHMENT D: INSURANCE ACCORD

6. **CONSIDERATION.** The parties agree that Contractor will provide the services at no cost to State. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a

Approved 05/08/02
Revised 01/04

20

biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. 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 specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a state claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a state claim and that this amount will be deducted from the state claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, 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. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, 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 of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, 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. All subcontracts shall reflect requirements of this paragraph.

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 the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. 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.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

b. State Termination for Nonappropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
- ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of



the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph (21).

11. REMEDIES. 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, without limitation, 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. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. 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.

14. INDEMNIFICATION. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor 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 the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and term

negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

	Contractor's Initials	
	YES	NO
1. Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	X
2. Will the Contracting Agency be providing training to the independent contractor?	_____	X
3. Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	X
4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	X
5. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	X
6. Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	X
7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	X

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The State shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

- 1. Final acceptance by the State of the completion of this Contract; or
- 2. Such time as the insurance is no longer required by the State under the terms of this Contract.

Any insurance or self-insurance available to the State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

Workers' Compensation and Employer's Liability Insurance

- 1) Contractor shall provide proof of worker's compensation insurance as required of Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.
If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.
- 3) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a fully executed "Affidavit of Rejection of Coverage Under NRS 616B627 and NRS 617.210" form.

Commercial General Liability Insurance

- 1) Minimum Limits required:

<u>\$2,000,000</u>	General Aggregate
<u>\$1,000,000</u>	Products & Completed Operations Aggregate
<u>\$1,000,000</u>	Personal and Advertising Injury
<u>\$1,000,000</u>	Each Occurrence
- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Business Automobile Liability Insurance

- 1) Minimum Limit required: \$1,000,000 Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).
The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Professional Liability Insurance

- 1) Minimum Limit required: \$5,000,000 Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the contract
- 3) Discovery period: Three (3) years after termination date of contract.
- 4) A certified copy of this policy may be required.

Umbrella or Excess Liability Insurance

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

Commercial Crime Insurance

Minimum Limit required: \$to be provided in amendment 1 of RFP Per Loss for Employee Dishonesty
This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

Performance Security

Amount required: \$waived

- Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the State of Nevada, only.
- 1) The security shall be deposited with the contracting State agency no later than ten (10) working days following award of the Contract to Contractor.
 - 2) Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

General Requirements:

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, *The State of Nevada, its officers, employees and immune contractors* as defined in NRS41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the Risk Management Division.
- e. **Policy Cancellation:** Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that, without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address shown below.
- f. **Approved Insurer:** Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
 - 2) Currently rated by A.M. Best as "A- VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

- 1) **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26) . signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per **General Requirements**, Subsection a above.
- 3) **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlier Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its subcontractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

Mail all required insurance documents to the Contracting Agency identified on page one of the contract.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. 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.

19. **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 nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. **ASSIGNMENT/DELEGATION.** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

21. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** 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 the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

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

24. **FEDERAL FUNDING.** In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. **LOBBYING.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

a. Any federal, state, county or local agency, legislature, commission, counsel or board;

b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board

26. **WARRANTIES.**

a. **General Warranty.** Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multicentury formulas and data values and date data interface values that reflect the century. Pursuant to NRS 41.0321, the State is immune from liability due to any failure of any incorrect date being produced, calculated or generated by a computer or other information system.

27. 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. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. 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, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

29. ENTIRE CONTRACT 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 and approved by the Office of the Attorney General and the State Board of Examiners.

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

[Signature]
Independent Contractor's Signature

President
Independent Contractor's Title

[Signature] 11-2-07
Signature Date

Comm. Member
Title

Signature Date

Title

Signature Date

Title

[Signature]
Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by

On 11-13-07
(Date)

[Signature]
Deputy Attorney General for Attorney General

On 11/2/07
(Date)

Approved OSAN/02
Revised 01/04

2

Nevada Public Employees' Deferred Compensation Program
FICA Alternative Plan Document



Effective January 2004
Revised August 2010

**ELIGIBLE DEFERRED COMPENSATION PLAN
PREAMBLE**

This Plan has been adopted pursuant to NRS 287.250 – 287.370, and Title 26 IRS Code, Section 457. Deferred Compensation Plans inclusive, and is effective as of January 1, 2004.

Part-time, seasonal or temporary employees of the State of Nevada or Nevada System of Higher Education are required to participate in the Nevada FICA Alternative Deferred Compensation Plan, if hired on or after January 1, 2004 (State Government) or July 1, 2005 (Higher Education). FICA is the Federal Insurance Contributions Act ("FICA"). This is an alternative to Social Security coverage as permitted by the federal Omnibus Budget Reconciliation Act of 1990 ("OBRA"). Participants are not subject to tax on compensation under the Old Age, Survivors and Disability Income portion of FICA.

It is intended that the Plan be an Eligible Deferred Compensation Plan. The Employer does not and cannot represent or guarantee 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" 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 is required 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 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, 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 part-time, seasonal or temporary employee of the Employer within the meaning of FICA who receives Compensation.

"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.

"Non-elective Contribution" means an Employer directed non-elective deferral of 7.5% of Compensation.

"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.

"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 FICA Alternative 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 calendar 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 Alternative Payee, referred to as A.P., must be the Participant's spouse, former spouse, domestic partner 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.

ARTICLE II OPERATION OF PLAN

2.1 Participation

The Employer shall defer 7.5% of an Employee's Compensation

2.2 Rollover Contributions

Effective on or after January 1, 2002, an Employee may contribute a rollover contribution to the Plan. A rollover contribution is a Participant contribution or a direct rollover of an Eligible Rollover Distribution as defined in Section 402(c)(4) of the Code. The Administrator may require the Employee to certify, either in writing or in any other form permitted under rules promulgated by the IRS, that the contribution qualifies as a rollover contribution under the applicable provisions of the Code. If it is later determined that all or part of a rollover contribution was ineligible to be contributed to the Plan, the Administrator shall direct that any ineligible amounts, plus earnings or losses attributable thereto (determined in a uniform and nondiscriminatory manner) be distributed from the Plan to the Employee as soon as administratively feasible. Separate accounting shall be maintained by the Administrator for any

rollover contribution not attributable to an Eligible Deferred Compensation Plan. Rollover contributions will be non-forfeitable at all times.

2.3 Employer Contributions

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

ARTICLE III INVESTMENT RESPONSIBILITIES

3.1 Investment of the Deferred Amount

Amounts deferred or contributed pursuant to Article II shall be held for the exclusive benefit of Participants and their Beneficiaries in trust or under one or more Contracts. All amounts so held will be allocated to the appropriate Participation Accounts. All amounts held in Participation Accounts under this Plan shall be invested in an interest bearing account. The investment of amounts segregated on behalf of an alternate payee pursuant to a qualified domestic relations order may be directed by such alternate payee to the extent provided in such order. In the absence of such direction, such amounts shall be invested in the same manner as they were immediately invested before such segregation was made on account of such order. Each Participant Account shall reflect any gains or losses of the investment option(s) in which such account is invested.

3.2 Statements

The Employer will cause to be issued statements periodically, such statements to include any contributions, distributions, gains and/or losses as well as the total value of each Participant Account.

ARTICLE IV DISTRIBUTIONS

The Code and Regulations will override any inconsistent provisions in this Plan.

4.1 Eligibility

Distribution may be taken under any of the following circumstances, subject further to the provisions of this Article IV:

- a) Attainment of age 70-1/2, whether or not still employed;
- b) Severance from employment; or
- c) Participant's death.

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 4.4 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 4.3 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 4.4 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 Distribution On Account of the Participant's Death

In the event of the Participant's death, the full amount credited to the Participant's Account 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 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) If the distribution has not commenced prior to the death of the Participant;

(1) a non-spousal beneficiary must either;

(A) elect a distribution payable over a period not extending beyond his or her own life expectancy, commencing no later than the end of the calendar year following the calendar year in which the Participant died; OR

(B) elect a single-sum payment by the end of the calendar year which contains the fifth anniversary of the date of death of the employee, otherwise, such single-sum payment shall be made by the end of such calendar year.

(2) a spousal beneficiary may elect either a single-sum payment or a distribution payable over a period not exceeding his/her own life expectancy. Distribution to the spousal beneficiary must commence no later than the year the deceased Participant would have reached age 70-1/2.

(c) 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.

4.4 Forms of Payment

Except in the event of the Participant's death, all or a portion of the amount credited to the Participant's Account shall be distributed, as instructed by the Participant, under one of the following payment options:

- (a) A single sum payment;
- (b) Payments for a specified period where amounts are paid in installments not in excess of the Participant's allowable life expectancy or joint life expectancy of the Participant and his/her Beneficiary;
- (c) Annuity for a period certain of five (5) to thirty (30) years, but not in excess of the Participant's allowable life expectancy;
- (d) A life annuity;
- (e) A life annuity with period certain guaranteed, with the guarantee that if at the annuitant's death payments have not been made for the guaranteed period as elected, payments will continue to the Beneficiary. The guaranteed period to be elected may be either ten (10), fifteen (15) or twenty (20) years but may not exceed the life expectancy of the Participant and his or her Beneficiary; or
- (f) A joint and survivor annuity payable during the lifetime of the Participant and his/her Beneficiary.

4.5 Minimum Distribution Requirements

Notwithstanding any provision in this plan to the contrary, distribution from the Plan shall commence and be made in accordance with Section 401(a)(9) of the Code and the final regulations promulgated thereunder. Participants must commence distribution no later than April 1st following the later of (i) the calendar year in which the Participant attains age 70-1/2 or (ii) the calendar year in which the Participant retires.

4.6 Distribution for Certain Non-Participating Participant

Notwithstanding any provision of this plan to the contrary, if the total amount of a Participant's Participation Account under the Plan does not exceed the dollar limit (\$1,000 or less) under

Code Section 411(a)(11)(A), the account may be automatically cashed out without the Participant's consent.

**ARTICLE V
BENEFICIARY**

5.1 Designation

Each Participant has the right, by written notice filed with the Employer, 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 Employer, a proper beneficiary designation form.

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

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 Participant's estate. If no estate executor or administrator is appointed and qualified within one hundred twenty (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 be transferable in the event of bankruptcy or insolvency.

6.2 Qualified Domestic Relations Orders

No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in Section 414(p) of the Code.

**ARTICLE VII
ROLLOVERS AND PLAN TRANSFERS**

7.1 Direct Rollovers

Effective on or after January 1, 2002, a distributee may elect to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the distributee.

For purposes of this section an Eligible Rollover Distribution means any distribution of all or any portion of the balance to the credit of the distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; or any amount that is distributed on account of hardship.

For purposes of this section an Eligible Retirement Plan means an Eligible Retirement Plan that is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.

For purposes of this section, a distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse, former spouse or domestic partner who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse, former spouse or domestic partner.

For purposes of this section, a direct rollover is a payment by the Plan to the Eligible Retirement Plan specified by the distributee.

7.2 Transfers In

All or a portion of an Employee's benefit may be transferred from another Eligible Deferred Compensation Plan maintained by the Employer or another Eligible Governmental Employer and credited to the Participant's Account under this Plan, if:

- (a) the transferor plan provides that such transfer can be made; and
- (b) where the transfer is from a plan of another employer, the Employee has severed employment with such other employer.

As it deems necessary, the Employer may require such documentation from the transferor plan to affect the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan within the meaning of Code Section 457(b) and to assure that transfers are provided for under such plan.

The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer agrees to hold such other assets in trust under the Plan.

Any amounts transferred that have been deferred during the current calendar years will be considered deferrals subject to current calendar year deferral limitations.

If a transfer, occurring on or after January 1, 2002, is associated with a distributable event and the Employee is eligible to receive an Eligible Rollover Distribution as defined Section 402(c)(4) of the Code, such transfer will be considered a Rollover contribution subject to the provisions of section 2.8.

7.3 Transfers Out

All or a portion of a Participant Account may be transferred to another Eligible Deferred Compensation Plan maintained by another Eligible Governmental Employer, if:

- (a) the transferee plan provides that such transfer can be made; and
- (b) where the transfer is to a plan of another employer, the Employee has severed employment with the Employer.

Upon the completion of such transfer, the Plan and Employer are discharged of any liability to the Participant to pay amounts so transferred.

As it deems necessary, the Employer may require such documentation from the other plan to affect the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan within the meaning of Code Section 457(b) 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 and the applicable regulations.

If a transfer, occurring on or after January 1, 2002, is associated with a distributable event and the distribution is an Eligible Rollover Distribution as defined in Section 402(c)(4) of the Code, such transfer will be considered a Direct rollover subject to the provisions of Section 7.1.

7.4 Trustee to Trustee Transfers to Purchase Permissive Service Credit

Not applicable.

**ARTICLE VIII
ADMINISTRATION AND ACCOUNTING**

8.1 Administration by Employer

This Plan shall be administered by the Employer, which shall prescribe such forms, and adopt such rules and regulations as are necessary to carry out the purposes of the Plan. The Employer 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 Employer, which shall make the final determination concerning investment categories, investment guidelines and policies.

The Employer may contract with a financially responsible independent contractor to administer and coordinate the Plan under the direction of the Employer or to perform such services as may be mutually agreed to between the contractor and the Employer.

8.2 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 necessarily limited to, electronic or telephonic media.

8.3 Administrative Costs

The Employer 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 Employer may withhold or collect, or have withheld or collected, such costs, in such manner as he 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 and the Administrator. The Administrator may remit or direct the remission of appropriate amounts so withheld or collected to the Employer.

ARTICLE IX AMENDMENTS

9.1 Right to Amend, Modify and Terminate

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

9.2 Conformation

The Employer shall amend and interpret the Plan to the extent necessary to conform to the requirements of FICA and of Code Section 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 Employer shall correct such inconsistency within the period provided in Code Section 457(b).

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 rollover/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 one or more insurance 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, purposes other than for the exclusive purpose of providing benefits for Participants and their Beneficiaries or defraying reasonable expenses of administration of the Plan.

**ARTICLE XI
MISCELLANEOUS**

11.1 Retirement System Integration

Not applicable.

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 the 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 inure to the benefit 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 Employer shall be sent to the designated office of the Employer, 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 Employer's 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 FICA and regulations thereunder and Section 457 of the Code and the regulations thereunder and under the laws of the State of domicile of the Employer 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

Nevada Public Employees' Deferred Compensation Program

by _____
Its Executive Officer , FICA Alternative Deferred Compensation Plan
(Title)

Attest:

Title (Witness)

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CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: July 31 2012
Clerk of the Judicial District Court
of the State of Nevada in and for the County of Douglas.

By [Signature] Deputy