

**RESOLUTION OF THE  
BUDGET AND FINANCE COMMITTEE  
OF THE NAVAJO NATION COUNCIL**

**24<sup>TH</sup> NAVAJO NATION COUNCIL - Third Year, 2021**

**AN ACTION**

**RELATING TO BUDGET AND FINANCE COMMITTEE; APPROVING AN  
AMENDMENT AND RESTATEMENT OF THE RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION AND PARTICIPATING AFFILIATES TO IMPLEMENT  
PROVISIONS OF AN ENHANCED RETIREMENT PROGRAM, EFFECTIVE APRIL  
1, 2021**

**SECTION ONE. AUTHORITY**

- A. The Navajo Nation Council created and implemented a comprehensive retirement plan for the benefit of Tribal employees and authorized the Chairman of the Navajo Tribal Council with the approval of the Budget and Finance Committee of the Navajo Nation Council to develop, implement and administer the plan, through Navajo Tribal Council Resolution CF-21-73.
- B. The Budget and Finance Committee of the Navajo Nation Council ("the Budget and Finance Committee") is empowered to promulgate policies and regulations concerning the fringe benefits for Navajo Nation officials and employees and to conduct oversight of the functions of the Retirement Services Department, pursuant to 2 N.N.C. §§ 301(B)(8) and (13).

**SECTION TWO. FINDINGS**

- A. The Budget and Finance Committee, under the authority delegated in CF-21-73, initially adopted the Retirement Plan for Employees of the Navajo Tribe and Certain Tribal Affiliates (the "Retirement Plan") effective July 1, 1973, through BFMY-41-73.
- B. The Navajo Nation Council, the Budget and Finance Committee, and the Human Services Committee have since approved various amendments, including various Amended and Restated versions, of the Retirement Plan through

Resolution Nos. BFMA-56-74, BFMY-198-77, CMY-26-79, BFJY-101-85, BFJN-71-86, BFS-56-90, BFMY-25-91, BFS-98-02, BFMA-34-03, BFMA-05-08, BFCO-16-09, HSCD-13-10, BFJY-16-19, and BFO-34-19.

- C. The Navajo Nation, as the Employer under the Retirement Plan, has the right to amend the Retirement Plan from time to time to any extent that it deems advisable, pursuant to Section 13.01 of the Retirement Plan.
- D. At the direction of the Navajo Nation President, the Navajo Department of Retirement Services ("NDRS") worked with actuarial consultant Willie Towers Watson to prepare reports presenting several plan design alternatives for an enhanced retirement program in response to risks posed to employees by COVID-19. Several meetings were convened to discuss and update the plan designs, involving the Office of the President and Vice President, NDRS, Navajo Division of Human Resources, the Employee Benefits Program of the Navajo Nation Insurance Services Department, and the Navajo Department of Justice. Following discussions, the plan design alternatives were updated and four alternatives were presented to the Retirement Plan Administration Committee for consideration.
- E. The Retirement Plan Administration Committee chose an alternative, offering an additional three years of Benefit Service to eligible regular status employee Plan Participants aged sixty and above with at least ten years of Vesting Service who elect to retire under the Enhanced Retirement Plan. The Retirement Plan Administration Committee approved and recommended to the Budget and Finance Committee the adoption and approval of a Restated Plan Document incorporating this change for the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates, through RPAC-01-21, attached as **Exhibit 1**.
- F. Attached as **Exhibit 2** is an underscore-strikeout version of the current Retirement Plan document effective April 1, 2019, indicating insertion of new language by underscore and deletion of old language by overstrike. For reference, a "clean" unmarked version of the Amended and Restated Retirement Plan for Employees of the Navajo Nation and Participating Affiliates is attached as **Exhibit 3**.
- G. The Navajo Nation Department of Retirement Services recommends that the Amended and Restated Plan become

effective April 1, 2021 in order to give the Department time to provide notice of the changes to Plan Participants and to implement changes.

- H. The Budget and Finance Committee approves the Amended and Restated Retirement Plan for Employees of the Navajo Nation and Participating Affiliates, Effective April 1, 2021, attached as **Exhibit 2**.

### **SECTION THREE. APPROVAL**

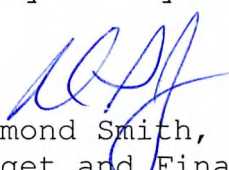
The Budget and Finance Committee hereby approves and adopts the Amended and Restated Retirement Plan for Employees of the Navajo Nation and Participating Affiliates, Effective April 1, 2021, attached as **Exhibit 2**.

### **SECTION FOUR. EFFECTIVE DATE**

The Amended and Restated Retirement Plan for Employees of the Navajo Nation and Participating Affiliates, attached as **Exhibit 2**, is effective as of April 1, 2021.

### **CERTIFICATION**

I, hereby, certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting held by teleconference at which a quorum was present and that the same was passed by a vote of 5 in favor and 0 opposed, this 4<sup>th</sup> day of May 2021.

  
Raymond Smith, Jr., Vice Chairperson  
Budget and Finance Committee

Motion: Honorable Nathaniel Brown  
Second: Honorable Jimmy Yellowhair



## RESOLUTION OF THE RETIREMENT PLAN ADMINISTRATION COMMITTEE

Approving and Recommending to the Budget and Finance Committee of the Navajo Nation Council the Approval and Adoption of an Amendment and Restatement of the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates to Implement Provisions of an Enhanced Retirement Program

### WHEREAS:

1. The Budget and Finance Committee of the Navajo Nation Council (the "Budget and Finance Committee") is empowered to promulgate policies and regulations concerning the fringe benefits for Navajo Nation officials and employees and to conduct oversight of the functions of the Navajo Nation Department of Retirement Services ("NDRS") pursuant to 2 N.N.C. §§ 301(B)(8) and (13); and
2. The Budget and Finance Committee, under the authority delegated in Resolution No. CF-21-73, initially adopted the Retirement Plan for Employees of the Navajo Tribe and Certain Tribal Affiliates ("Retirement Plan") effective July 1, 1973, through Resolution No. BFMY-41-73; and
3. The Navajo Nation Council, the Budget and Finance Committee, and the Human Services Committee have since approved various amendments and restatements of the Retirement Plan through Resolution Nos. BFMA-56-74, BFMY-198-77, CMY-26-79, BFJY-101-85, BFJN-71-86, BFS-56-90, BFMY-25-91, BFS-98-02, BFMA-34-03, BFMA-05-08, BFCO-16-09, HSCD-13-10, BFJY-16-19, BFO-34-19, and BFN-37-20; and
4. The Retirement Plan Administration Committee ("RPAC") is delegated the full power to administer the Retirement Plan and to construe and apply all of the Retirement Plan provisions, including engaging in such legal, administrative, consulting, actuarial, investment, accounting, and other professional services as the RPAC deems proper, pursuant to Article 11.02 of the Retirement Plan; and
5. The RPAC has reviewed the proposal to amend the Retirement Plan to implement the provisions of an Enhanced Retirement Program as outlined in **Attachment A** and recommends amending the Retirement Plan in accordance with **Attachment A**.

### NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Nation Retirement Plan Administration Committee hereby recommends to the Budget and Finance Committee the approval and adoption of the Amendment and Restatement to the Retirement Plan as outlined in **Attachment A**. The Retirement Plan Administration Committee further recommends to the Budget and Finance Committee that the Amendment and Restatement become effective as of the date of adoption, except where otherwise indicated in the Restated Plan Document.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Retirement Plan Administration Committee of the Navajo Nation at a duly called meeting conducted telephonically, at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed and 1 abstained, this 24th day of February, 2021.

  
\_\_\_\_\_  
Jamie Henio, Chairperson  
Retirement Plan Administration Committee  
THE NAVAJO NATION

Motion: Cheron Watchman, Proxy RPAC Member

Second: Reycita Toddy, RPAC Member

cc: RPAC file  
NN Department of Retirement Services: Resolution File  
Department of Justice  
Office of Legislative Council  
Budget and Finance Committee

**ATTACHMENT “A” to RPAC-01-21**

**APPENDICES “B” AND “F” OF THE RETIREMENT PLAN FOR EMPLOYEES OF  
THE NAVAJO NATION AND PARTICIPATING AFFILIATES  
RELATING TO THE ENHANCED RETIREMENT PROGRAM (“ERP”) OF 2021**

HISTORICAL PLAN PROVISIONS

- 1.04 Actuarial Equivalent Value. The 1976 Plan document does not specifically state the interest rate and mortality table used to determine the Actuarial Equivalent Value.
- 1.07 Affiliate. Prior to January 1, 2007, Affiliate included organizations associated with the Navajo Nation whose management board or executive officers were answerable to the Navajo Nation Council.
- 1.19 Early Retirement Date was:  
Commissioned Law Enforcement Officers - Age 45 with seven years of Service  
Other Participants - Age 55 with seven years of Service in the 1976 Plan statement.
- 1.27 Final Average Earnings. Prior to October 1, 1989, the averaging period was 60 months instead of 36 months.
- 1.33 “Judge’s Final Pay” shall apply only to Judges appointed prior to January 29, 2003 and shall mean the product of 12 times the average of a Judge’s monthly Earnings for the last 12 months of Benefit Service. In calculating the Judge’s Final Pay for a Judge whose Benefit Service was separated by periods of Non-benefit Service or Period of Severance, such Judge’s Benefit Service shall be considered to be consecutive.
- 1.35 Normal Retirement Age. Prior to October 1, 1989, the Normal Retirement Age for Other Participants was 65.
- 1.36 “Normal Retirement Age” means 55 for Judges whose Employment Commencement Date is prior to January 29, 2003.
- 1.41 Plan. Prior to October 1, 1989, the Plan was entitled Retirement Plan for Employees of the Navajo Tribe and Certain of its Affiliates.
- 2.03 Benefit Service. Prior to October 1, 1999, unused sick leave not credited as Benefit Service.
- 2.04 Non-benefit Service. Prior to October 1, 1999, there was no formal Benefit Service exclusion for Elected Chapter Officials.

## **APPENDIX B**

3.01 Eligibility to Become a Participant. Prior to October 1, 1999, there was no eligibility exclusion for Elected Chapter Officials. In the 1976 Plan statement, there was a 12-month wait to participate for those hired after June 30, 1976.

5.01 Normal Retirement Benefit. The Service multiplier has changed twice under the Plan:

| <u>Effective Date</u> | <u>Service Prior to 10/1/84</u> | <u>Service After 10/1/84</u> |
|-----------------------|---------------------------------|------------------------------|
| 10/1/89               | 2%                              | 2%                           |
| 10/1/84               | 2%                              | 1.25%                        |
| Prior to 10/1/84      | 1.25%                           | 1.25%                        |

For Judges whose Employment Commencement Date is prior to January 29, 2003; the Judge's Benefit Percentage times the Judge's Final Pay. The Judge's Benefit Percentage shall be equal to (1) plus (2) where:

- (1) is the lesser of 8 and the number of years of Benefit Service as a Judge, divided by 16 years; and
- (2) is the number of years of Benefit Service as a Judge in excess of 8 years, divided by 14 years.

Judges whose Employment Commencement Date is prior to January 29, 2003 with less than eight years of Vesting Service are not eligible for retirement benefits.

5.02 Postponed Retirement Benefit. The 1976 Plan statement froze benefits at the Normal Retirement Age.

5.03 Prior to October 1, 1989, the early retirement reduction factors were:

| <u>Months by which Early Retirement precedes Normal Retirement Date</u> | <u>Percentage reduction for each month prior to Normal Retirement Date for Employees whose Normal Retirement Age is:</u> |   |
|---|--|---|
|   | <u>65</u>  | <u>55</u>                               |
| First 60 months   | Sixty-five one-hundredths of 1% (.65%)   | Fifty-five one-hundredths of 1% (.55%)  |
| Months in excess of 60  | Thirty-five one-hundredths of 1% (.35%)  | Thirty-five one-hundredths of 1% (.35%) |



## **APPENDIX B**

- 5.04 Prior to October 1, 1984, a Participant did not vest until completing seven years of Vesting Service.
- 5.05 Prior to October 1, 1999, the eligibility for disability retirement was five years of Vesting Service. The benefit was the Accrued Benefit reduced actuarially for immediate payment.
- 7.02 The 1976 Plan statement vested Participants at age 65.
- 7.03 Prior to October 1, 1984, a Participant did not vest until completing seven years of vesting.
- 8.01(a)(2) Prior to October 1, 1984, there was no pre-retirement death benefit for a Participant who died prior to the Early, Normal or Postponed Retirement Date.
- 9.04(c) The 1976 Plan statement specified the limit for lump sum cashouts as \$1,750. Prior to October 1, 1999, the actuarial equivalence definition was 6% and 1971 TPF&C Forecast Mortality Table.

APPENDIX C The Plan was amended to provide automatic Cost-of-Living Adjustments (COLA) to Participants (and their Beneficiaries) who retired from active Service prior to October 1, 1996, effective October 1, 2006. In addition, a one-time 2% COLA was effective October 1, 2014.

APPENDIX D The Plan was amended to adopt a Special Retirement Program (SRP) 2009 to provide incentive for eligible employees to retire voluntarily during a window period with enhanced benefits.

APPENDIX E The Plan was amended to adopt a Benefit Service Credit Purchase provision which provides eligible participants with the option to purchase “Benefit Service Credit” for periods of intervening service in the U.S. Armed Forces and for periods of service with another Indian Tribal, Federal, State, or local government or governmental agency if that service was not otherwise credited under that government’s retirement plan.

APPENDIX F The Plan was amended to adopt the Enhanced Retirement Program (“ERP”) of 2021.

RETIREMENT PLAN FOR EMPLOYEES OF THE NAVAJO NATION

AND PARTICIPATING AFFILIATES

ENHANCED RETIREMENT PROGRAM ("ERP") OF 2021

F.1 Purpose

The purpose of the Enhanced Retirement Program ("ERP") is to offer an enhanced retirement benefit package to those Navajo Nation employees retiring due to the Coronavirus ("COVID-19"), to reward eligible employees for their service and contribution to the Navajo Nation, and provide incentive for ERP Eligible Participants to retire on a voluntary basis. This ERP is voluntary, and ERP Eligible Participants who elect to retire during the ERP Window Period shall receive ERP Benefit Enhancement under the Plan.

F.2 ERP Eligible Participant

A Participant other than an Ineligible Participant who meets the following conditions:

- (a) Is a regular status employee of the Navajo Nation as described in Section 1.22, is at least sixty (60) years of age with at least ten (10) years of Vesting Service and is a regular status employee as of March 31, 2021; or
- (b) Is described in F.7.

F.3 Ineligible Participants

Notwithstanding having met the criteria set forth in Section F.2 of this Appendix F, the following categories of Navajo Nation employees as of March 31, 2021 are ineligible for participation in the ERP:

- (a) Commissioned Law Enforcement Officers;
- (b) Judges;
- (c) Council Delegates;
- (d) Political Appointees;

- (e) Temporary employees; or
- (f) Participants with benefits accruing from service with an Affiliate (that is, those with no service as a regular status employee of the Navajo Nation).

F.4 ERP Window Period

An ERP Eligible Participant will be entitled to the ERP Benefit Enhancement described in Section F.5 of this Appendix F, provided the Participant makes an election in the manner prescribed by the Plan Administrator between June 11, 2021 and July 28, 2021, to participate in this ERP with a retirement from Service date on or before September 30, 2021. An ERP Eligible Participant may revoke his/her election to participate in this ERP within seven (7) calendar days after the original election is made.

F.5 ERP Benefits Enhancement

An ERP Eligible Participant who elects to participate during the ERP Window Period and retires from Service on or before September 30, 2021 shall be entitled to one the following Benefits Enhancement options:

- (a) For purposes of calculating the ERP Eligible Participant's Normal Retirement Benefit, in accordance with Section 5.01 of the Plan, and based on the ERP Eligible Participant's Final Average Earnings and the ERP Eligible Participant's number of years of Benefit Service at his Retirement Date, the ERP Eligible Participant's number of years of Benefit Service shall be increased by three (3);
- (b) For purposes of calculating the ERP Eligible Participant's Postponed Retirement Benefit, in accordance with Section 5.02 of the Plan, and based on the ERP Eligible Participant's Final Average Earnings and the ERP Eligible Participant's number of years of Benefit Service at his Postponed Retirement Date, the ERP Eligible Participant's number of years of Benefit Service shall be increased by three (3);
- (c) For purposes of calculating the ERP Eligible Participant's Early Retirement Benefit, in accordance with Section 5.03 of the Plan, and based on the ERP Eligible Participant's Final Average Earnings and the ERP Eligible Participant's number of years of Benefit Service at his Early Retirement Date, the ERP Eligible Participant's number of years of Benefit Service shall be increased by three (3).
  - 1) At the election of the ERP Eligible Participant, he may receive his Early Retirement Benefit as an annuity, commencing at his Early Retirement Date or at any date thereafter, in a reduced amount calculated by reducing the Early Retirement Benefit by five twelfths of one percent (5/12 %) for each month by



## APPENDIX F

which the ERP Benefit Commencement Date precedes his Normal Retirement Date.

### F.6 Commencement of ERP Benefit Enhancement

Any ERP Benefit Enhancement payable under this Appendix F shall commence at the same Benefit Commencement Date elected by the Participant for benefits payable pursuant to Sections 5.01, 5.02, or 5.03 of the Plan.

### F.7 Retirements Prior to ERP Window Period

Notwithstanding any provisions in this Appendix F to the contrary, an ERP Eligible Participant who terminated employment with the Navajo Nation after the commencement of COVID-19 related office closures (see Navajo Nation Executive Order 001-20), commenced benefit payments on or after April 1, 2020, and who would otherwise satisfy the conditions described in Section F.2 (a) as of March 31, 2021, if employment had continued until that date, shall be entitled to the ERP Benefit Enhancement beginning October 1, 2021.

### F.8 Form of Payment

Any ERP Benefit Enhancement payable under this Appendix F shall be paid in the same form elected by the Eligible Participant pursuant to Article 9, for benefits payable under Sections 5.01, 5.02, or 5.03 of the Plan.

### F.9 Other Plan Provisions

This Appendix F shall apply only to ERP Eligible Participants as described in Section F.2. Except as otherwise specified in this Appendix F, all other provisions contained in the Plan shall continue to apply to ERP Eligible Participants.



**RETIREMENT PLAN FOR EMPLOYEES OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES**

Amended and Restated

Effective April 1, 2019

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## INTRODUCTION

The Retirement Plan for Employees of the Navajo Nation and Participating Affiliates (the "Plan") as stated herein is an amendment and restatement of the Retirement Plan for Employees of the Navajo Tribe and Certain of its Affiliates as in effect on July 1, 1973. The Plan was amended and restated effective July 1, 1976. The Plan was amended effective October 1, 1984 and October 1, 1989 to improve the benefits provided under this Plan. Moreover, effective January 1, 2002, the Plan was amended to make specific benefit changes and to clarify administrative practices. Effective October 1, 2002, provisions covering Judges of the Navajo Nation were added to the Plan.

The Plan is hereby amended and restated effective April 1, 2019 to clarify certain benefit provisions, to make certain administrative changes. The amendment to increase the Normal Retirement Age under the Plan for participants other than Commissioned Law ~~Enforcement~~ ~~Enforcement~~ Officers shall be effective January 1, 2020. The provisions of this Plan are intended to be qualified under Sections 401(a) and 501(a) of the Internal Revenue Code, as applicable for governmental plans.

The provisions of this Plan supersede prior Plan provisions for all persons in the employment of the Employer or any Affiliates at any time on or after the Restatement Effective Date and of all persons claiming through, under or against such persons. The provisions of the Plan as in effect immediately prior to the Restatement Effective Date shall govern Participants who ceased to be employed, by retirement or otherwise, prior to the Restatement Effective Date and of all persons claiming through, under or against such Participants.

## ARTICLE 1

### Definitions

- 1.01 "Accrued Benefit" shall mean the amount of annual pension benefit, payable as a straight life annuity, commencing at Normal Retirement Age, as shall be considered accrued at any time for a Participant in accordance with the provisions of Article 5. In the case where a Participant has been employed by more than one Participating Affiliate and unless otherwise noted in Appendix A, a separate Accrued Benefit is determined which is attributable to each Participating Affiliate. Each such Accrued Benefit is determined in accordance with Article 5 ignoring the Earnings and Benefit Service while employed by other Participating Affiliates.
- 1.02 "Active Participant" means a Participant still actively employed as an Eligible Employee.
- 1.03 "Actuarial Equivalent" shall mean a benefit or amount having the same Actuarial Equivalent Value as an Accrued Benefit or other applicable benefit. Prior to July 1, 2016, the Ten and Fifteen Year Certain and Life Annuities described in Sections 9.04(c) and (d) shall be 92% and 88%, respectively, of the Straight Life Annuity Option determined under Section 9.04(b).
- 1.04 "Actuarial Equivalent Value" for all benefits commencing on and after July 1, 2016, shall mean the single sum present value of an Accrued Benefit or other applicable benefit, where values are calculated using a 6% interest rate and the 1983 Group Annuity Mortality Table (83GAM), using 50% of the male, 50% of the female mortality rates as published in Revenue Ruling 95-6. Prior to July 1, 2016, "Actuarial Equivalent Value" shall mean the single sum present value of an Accrued Benefit or other applicable benefit, where values are calculated using a 6% interest rate and the 1971 TPF&C Mortality Table, with three years setback for both Participants and Joint Annuitants; notwithstanding, for any form of payment subject to Code Section 417(e), values are calculated using the annual 30-Year Treasury Bond rate of October (published in November) prior to the calendar year of payment and 83GAM, using 50% of the male, 50% of the female blend (or such other table as the Secretary may prescribe).
- 1.05 "Actuary" shall mean that individual who is an "enrolled actuary" as defined in Section 7701(a)(35) of the Code or that firm of actuaries which has on its staff such an actuary, appointed by the Committee.

- 1.06 "Adjustment Factor" shall mean the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code for years beginning after December 31, 1993, applied to such items and in such manner as the Secretary shall prescribe.
- 1.07 "Affiliate" shall mean any Chapters which are certified under Title 26 of the Local Governance Act.
- 1.08 "Beneficiary" shall mean that person who shall be entitled to receive benefits payable pursuant to the provisions of this Plan by virtue of a Participant's death, pursuant to the provisions of Article 9.
- 1.09 "Benefit Service" shall mean the period of Service, expressed as number of years and completed months, of a Participant which is used to calculate the amount of the Participant's Accrued Benefit, determined in accordance with Article 2.
- 1.10 "Benefit Commencement Date" shall mean the first day of the first month for which a benefit is payable to an individual, even though the first payment may not actually have been made at that date.
- 1.11 "Break in Service" shall mean a Termination followed by the completion of a one-year Period of Severance.
- 1.12 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.
- 1.13 "Commissioned Law Enforcement Officers" shall mean Active Participants who are charged with the responsibility of the enforcement of Navajo Nation laws and have been commissioned by the

Chief of Police of the Navajo Nation Division of Public Safety and for the purposes of this document shall include Active Participants employed by the Navajo Nation in their regular status as:

- (a) firefighters,
- (b) forest rangers,
- (c) historic preservation rangers, or
- (d) environmental protection agency personnel.

1.14 "Committee" shall mean the Retirement Plan Administration Committee, which is responsible for the operations and administration of the Plan in accordance with the provisions of Article 11.

1.15 "Compensation" shall mean the wages as defined in Code Section 3401(a) for purposes of income tax withholding, but without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed. For Plan Years beginning on or after January 1, 1998, Compensation shall also include contributions made by the Employer or any Affiliate pursuant to the salary reduction elections of an Employee that are not includible in the gross income of the Employee under Code Sections 125 and 402(e)(3) (i.e., cafeteria plan and 401(k) contributions).

1.16 "Deferred Vested Benefit" shall mean the benefit to which a vested Participant would be entitled after a Break in Service, as calculated in accordance with Article 5.

1.17 "Defined Benefit Dollar Limitation" shall mean the limitation set forth in Section 415(b)(1) of the Code.

1.18 "Early Retirement Benefit" shall mean the benefit to which a Participant would be entitled in the event of his retirement prior to his Normal Retirement Date, as calculated in accordance with Article 5.

1.19 "Early Retirement Date" shall mean the first day of the calendar month coincident with or next following the Participant's Termination Date, if such date is earlier than the Participant's Normal Retirement Date, provided that the Participant has completed four years of Vesting Service by his Termination Date, and provided that the Participant has attained the age specified below by his Termination Date.

|                                       | <u>Age</u> |
|---------------------------------------|------------|
| Commissioned Law Enforcement Officers | 45         |
| Other Participants                    | 55         |

1.20 "Earnings" shall mean, for any period, base salary or base wages received from the Employer for that period. Earnings shall exclude overtime, bonuses, etc. Earnings shall include contributions made by an Employer pursuant to salary reduction elections of an Employee that are not includible in gross income of the Employee under Code Sections 125 or 402(a)(8) (i.e., cafeteria plan or 401(k) contributions). For Benefit Commencement Dates after October 1, 2000, hourly pay rates used to determine any Accrued Benefit shall not be less than \$2.01.

1.21 "Effective Date" shall mean July 1, 1973.

1.22 "Eligible Employee" shall mean, pursuant to the provisions of Article 3, a regular status Employee as determined by the Employer's personnel policies and procedures, a Navajo Nation Council Delegate, the President and Vice President of the Navajo Nation, Judges of the Navajo Nation, and



a Leased Employee of the Employer who is specifically covered under this Plan pursuant to the leasing arrangement.

1.23 "Employee" shall include any person who is a regular status employee, a common-law employee, a Leased Employee of the Employer, and the President or Vice President of the Navajo Nation. A common-law employee as used in this document refers to Judges of the Navajo Nation and Navajo Nation Council Delegates in accordance with Navajo Nation Council Resolution CAP-23-00.

1.24 "Employer" shall mean the Navajo Nation and any other Participating Affiliate, which, with the approval of the Committee, shall adopt this Plan for its Eligible Employees. "Employer" when used in this Plan shall refer to the Navajo Nation and Participating Affiliates either individually or collectively, as the context may require. Appendix A contains a list of the Participating Affiliates, which shall be updated as needed when the Budget and Finance Committee approves an amendment to the Plan pursuant to Section 13.01.

1.25 "Employment Commencement Date" shall mean:

(a) For purposes of determining Service as a Judge, the date on which the Employee is first confirmed as a Judge by the Navajo Nation Council.

(b) For all other Employees, the date on which the Employee is first credited with an Hour of Service.

1.26 "Final Average Earnings" shall mean the product of 12 times the average of the Participant's highest monthly Earnings for 36 months out of the last 120 months of Benefit Service. If the

Participant has less than 36 months of Benefit Service, the total number of months of Benefit Service will be used in the preceding calculation.

In calculating Final Average Earnings for a Participant whose Benefit Service was separated by periods of Non-benefit Service or Period of Severance, such Participant's Benefit Service shall be considered to be consecutive.

In the event a Participant did not receive any Earnings during a period when he was credited with Benefit Service, such period shall be disregarded and the remaining Benefit Service shall be aggregated to calculate his Final Average Earnings.

In calculating Final Average Earnings, as used for calculation of benefits under this Plan, the amount of Earnings taken into account in any 12-month period shall not exceed \$150,000 times the Adjustment Factor applicable for that 12-month period. Effective for Plan Years beginning on or after January 1, 2002, the amount of Earnings taken into account in any 12-month period shall not exceed \$200,000 times the Adjustment Factor applicable for that 12-month period.

In the case where a Participant has been employed by more than one Participating Affiliate, including Chapters as described in Appendix A, and unless otherwise noted in Appendix A, Final Average Earnings is determined for each Participating Affiliate with which the Participant has been employed based upon Earnings and Benefit Service while employed by Participating Affiliate. For purposes of determining such Final Average Earnings, Benefit Service and Earnings with other Participating Affiliates are ignored.



- 1.27 "Fund" shall mean any fund provided for in a Trust arrangement or an insurance contract or a combination of both, which is held by a Funding Agent, to which contributions under the Plan will be made on and after the Effective Date, and out of which benefits are paid to the Participants or otherwise provided for.
- 1.28 "Funding Agent" shall mean a Trustee or insurance company or any duly appointed successor or successors selected to hold a Fund.
- 1.29 "Hour of Service" shall mean an Hour of Service calculated in accordance with the provisions of Article 2.
- 1.30 "Joint Annuitant" shall mean the Beneficiary who will receive retirement benefits after the death of the Participant based on the provisions of a Joint and Survivor Annuity, as described in Article 9. The Joint Annuitant cannot be changed after the Benefit Commencement Date.
- 1.31 "Joint and Survivor Annuity" shall mean a retirement benefit under which equal monthly installments are payable during the joint lifetimes of the retired Participant and the Joint Annuitant, and under which, upon the earlier death of the retired Participant, 100%, or 75% or 50% as elected by the Participant prior to his Benefit Commencement Date, continues to be paid to the Joint Annuitant for the Joint Annuitant's lifetime. No further benefits are payable when both the Participant and the Joint Annuitant have deceased.
- 1.32 "Judge" shall mean any person who is: (1) Chief Justice of the Navajo Nation, (2) an associate justice of the Navajo Nation Supreme Court, or (3) a trial Judge of the Navajo Nation district courts and family courts.

1.33 "Judge's Final Pay" shall apply only to Judges appointed before January 29, 2003. Refer to the Historical Plan Provisions in Appendix B for provisions applicable to Judges appointed prior to January 29, 2003.

1.34 "Leased Employee" means any person who renders personal services to an Employer and who is described in Section 414(n)(2) of the Code by reason of providing such services, other than a person described in Section 414(n)(5) of the Code.

1.35 "Non-benefit Service" shall mean the period(s) of Service rendered by an Employee in an employment category not eligible for participation in the Plan as set forth in Section 2.04.

1.36 "Normal Retirement Age" means:

|  | <u>Age</u> |
|--|------------|
| Commissioned Law Enforcement Officers  | 55         |
| Other Participants, the youngest of:   |            |
| • If less than 10 Years of Vesting Service on January 1, 2020                  | 62         |
| • If at least 10, but less than 25 Years of Vesting Service on January 1, 2020 | 61         |
| • If at least 25 Years of Vesting Service on January 1, 2020                   | 60         |
| • If at least age 55 and a Participant on January 1, 2020                      | 60         |
| • If retired prior to January 1, 2020  | 60         |

1.37 "Normal Retirement Benefit" shall mean the benefit to which a Participant would be entitled in the event of his retirement on his Normal Retirement Date, as calculated in accordance with Article 5.

- 1.38 "Normal Retirement Date" means the first day of the calendar month coincident with or next following the attainment of Normal Retirement Age.
- 1.39 "Participant" shall mean any Eligible Employee who becomes a Participant in the Plan pursuant to Article 3 and shall include any individual who has separated from Service or ceased to be an Eligible Employee and for whom there is still a liability under the Plan.
- 1.40 "Participating Affiliate" shall mean any Affiliate, including eligible Local Governance Act-certified chapters of the Navajo Nation, that has elected, with the approval of the Committee, to participate in the Plan as to some or all of its Eligible Employees by adopting this Plan and the Funding Agreement. Such Employees shall be considered Eligible Employees under the Plan and, for the purposes of their benefits under the Plan, the Participating Affiliate shall be included in the definition of Employer in Section 1.24. Adoption shall become effective upon the completion of all of the following steps: (1) passage of a Chapter resolution approving the adoption of the Plan and requesting approval of the Committee for the Chapter to join the Plan as a Participating Affiliate; (2) passage of a resolution of the Committee approving the Chapter as a Participating Affiliate; and (3) execution of a Funding Agreement between the Chapter and the Navajo Nation, which shall be signed by the Navajo Nation President and the authorized Chapter official and/or Chapter Manager. Appendix A contains a list of the Participating Affiliates.
- 1.41 "Period of Severance" shall mean the period between a Participant's date of Termination and the date he subsequently first performs an Hour of Service for an Employer.
- 1.42 "Plan" shall mean the Plan designated as the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates, as embodied herein, and any amendments thereto, and shall also refer

to any Predecessor Plan for which this document is a restatement, and any Predecessor Plan which has been merged into this Plan.

1.43 "Plan Sponsor" shall mean the Navajo Nation and Participating Affiliates.

1.44 "Plan Year" shall mean the following 12-month periods:

|                                       | <u>Plan Year</u> |
|---------------------------------------|------------------|
| October 1, 1996 and thereafter        | 10/1 - 9/30      |
| April 1, 1990 to March 31, 1996       | 4/1 - 3/31       |
| October 1, 1978 to September 30, 1989 | 10/1 - 9/30      |
| July 1, 1973 to June 30, 1977         | 7/1 - 6/30       |

The months spanning between the changes in the Plan Year shall constitute a short Plan Year.

1.45 "Postponed Retirement Benefit" shall mean the benefit to which a Participant would be entitled upon his retirement after his Normal Retirement Date, as calculated in accordance with Article 5.

1.46 "Postponed Retirement Date" shall mean the first day of the calendar month coincident with or next following the Participant's Termination Date, if such date is later than the Participant's Normal Retirement Date.

1.47 "Predecessor Plan" shall mean any plan for which this Plan is a restatement, any Plan which has been merged into this Plan or any Predecessor Plan, or any other Plan sponsored by an entity which adopted this Plan or a Predecessor to this Plan for any of its Employees who had been Participants in such other Plan.

- 1.48 "Qualified Joint and Survivor Annuity" shall mean, for a married Participant, a Joint and Survivor Annuity with the Participant's Spouse as Joint Annuitant and a survivor benefit equal to 50% of the Participant's benefit. For a single Participant it shall mean a benefit payable in the form of an annuity for the life of the Participant. The Qualified Joint and Survivor Annuity for a married Participant shall be at least the Actuarial Equivalent of the Participant's Accrued Benefit.
- 1.49 "Restatement Effective Date" shall mean April 1, 2019.
- 1.50 "Retirement Date" shall mean a Participant's Normal, Early or Postponed Retirement Date.
- 1.51 "Service" shall mean an Employee's period of employment with an Employer or an Affiliate that is counted as "Service" in accordance with Article 2. For the purpose of determining Service, Employee Commencement Date, date of re-employment, date of Termination, and Retirement Date shall be adjusted as follows:
- (a) dates prior to the 15<sup>th</sup> of the month shall be converted to the first of the month, and
  - (b) dates on and after the 15<sup>th</sup> of the month shall be converted to the first of the following month.
- 1.52 "Spouse" shall mean the wife of a male Participant and the husband of a female Participant as determined under Navajo Nation Law.
- 1.53 "Termination" shall mean the cessation of active employment with the Employer.

- 1.54 "Termination Date" shall mean the first date on which an Employee ceases active employment with the Employer.
- 1.55 "Trust" shall mean any monetary trust established under an agreement between the Employer and a Trustee under which any portion of the Fund is held, and shall include any and all amendments to the Trust agreement.
- 1.56 "Trustee" shall mean any Trustee holding any portion of the Fund under a Trust agreement forming a part of the Plan.
- 1.57 "Vesting Service" shall mean Service for determining a Participant's right to vest in his Accrued Benefit under Article 7, as counted under the rules of Article 2.

## ARTICLE 2

### Service Counting Rules

2.01 Hours of Service - An Employee shall be credited with an Hour of Service for:

- (a) each hour for which a person is directly or indirectly paid, or entitled to payment, by an Employer for the performance of duties;
- (b) each hour for which a person is directly or indirectly paid, or entitled to payment, by an Employer for reasons other than for the performance of duties (such as vacation, holiday, illness, incapacity including disability, jury duty, military duty, leave of absence or layoff);
- (c) each hour for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by an Employer;
- (d) each hour for which an Employee is not paid or entitled to payment but during which he or she normally would have performed duties for an Employer during any period for which he or she is eligible to receive benefits under the short-term disability plan of an Employer; and
- (e) each hour for which an Employee is not paid or entitled to pay but during which the Employee is absent for a period of military service or paternity/maternity leave (sick leave/family and medical leave) for which re-employment rights are protected by law, but only if the Employee returns to employment within the time required by law.



2.02 Vesting Service - An Employee shall be credited with a Year of Vesting Service for each Year of Service credited in accordance with the following rules:

(a) Each person will be credited with Service under the Plan for the period or periods during which such person maintains an employment relationship with an Employer. A person's employment relationship will be deemed to commence on his Employment Commencement Date and will be deemed to continue during the following periods:

(1) Periods of leave of absence with or without pay granted to the person by an Employer in a like and nondiscriminatory manner for any purpose including, but not limited to, sickness, accident or military leave. Such person will not be considered to have terminated employment during such leave of absence unless he or she fails to return to the employ of the Employer at or prior to the expiration date of such leave, in which case he or she will be deemed to have terminated as of the date of commencement of such leave.

(2) In the case of a person who terminates employment and who is subsequently re-employed by the Employer without having incurred a Break in Service, the period between his date of Termination and date of re-employment.

(b) An Employee who has incurred a Break in Service will receive credit for Service prior to such Break in Service in the Plan if:

(1) he or she had at least four years of Vesting Service at the time of his termination of employment, or



- (2) the number of his consecutive one-year Breaks in Service is less than the greater of five consecutive one-year Breaks in Service or the aggregate number of years of Service before his Termination of employment, or
- (3) he or she is or becomes an Eligible Employee on or after October 1, 2000.
- (c) Except as otherwise provided under paragraph (b) above, all periods of a person's Vesting Service, whether or not consecutive, will be aggregated. Vesting Service will be measured in elapsed years and fractions of years whereby each 12 complete calendar months constitutes one year, each completed calendar month constitutes 1/12 of a year.
- (d) An Employee's Service with an Affiliate will be counted as Service with the Employer in accordance with the above rules.
- (e) Service of a Delegate of the Navajo Nation Council and the President and Vice President of the Navajo Nation shall be counted beginning January 12, 1999. All Service as a Participant prior to holding office shall be counted.

2.03 Benefit Service - A Participant shall be credited with Benefit Service for each period of Service performed while an Eligible Employee during which the Participant accrues Vesting Service pursuant to Section 2.02, and, in the case of Normal, Early or Postponed Retirement, for the equivalent periods of unused sick leave as of the Participant's Retirement Date, subject to the following exceptions:

- (a) Benefit Service shall not be credited during a Period of Severance or furlough (the placement into temporary non-duty and non-pay status due to closure of a Head Start school facility for the summer) even though it is less than 12 months.
- (b) Benefit Service shall not be credited for employment with Department of Head Start prior to October 1, 1981.
- (c) Benefit Service shall not be credited during periods of Non-benefit Service as set forth in Section 2.04.
- (d) Benefit Service for Members of the Navajo Nation Council and the President and Vice President of the Navajo Nation shall not be credited for periods prior to January 12, 1999.

In the case where a Participant has been employed by more than one Participating Affiliate and unless otherwise noted in Appendix A, Benefit Service shall be determined for each Participating Affiliate for purposes of Article 5.

2.04 Non-benefit Service - Non-benefit Service shall consist of the number of years and completed months of Service rendered by an Employee in an employment category not eligible for participation in the Plan as set forth below:

- (a) The President and Vice President of the Navajo Nation, and members of the Navajo Nation Council who are eligible to participate in the Deferred Retirement Plan for Members of the Navajo Nation Council for Service prior to January 12, 1999.

(b) Employees serving at the pleasure of the President of the Navajo Nation, the Speaker of the Navajo Nation Council, or the Navajo Nation Council, who are eligible to participate in the Deferred Compensation Plan for Certain Employees of the Navajo Nation and who:

(1) were not serving at the pleasure of the President of the Navajo Nation, the Speaker of the Navajo Nation Council, or the Navajo Nation Council on February 14, 1989; and

(2) do not have an Hour of Service after February 14, 1989.

(c) Temporary employment as defined by personnel policies and procedures.

(d) Elected Chapter Officials (President, Vice President, Secretary, and Land Board members).

2.05 Qualified Military Service - Notwithstanding any provision of this Plan to the contrary, with respect to Employees who are rehired by the Employer or any Affiliate on or after December 12, 1994, contributions, benefits and Service credit with respect to Qualified Military Service will be provided in accordance with Section 414(u) of the Code.

### ARTICLE 3

#### Eligibility for Participation and Transfers

3.01 Eligibility to Become a Participant - All Participants who were participating in this Plan on the Restatement Effective Date shall continue to participate. Any other Eligible Employee shall become a Participant on the date he or she becomes a regular status Employee as determined by the Employer's personnel policies and procedures, subject to the conditions and/or exceptions set forth below:

- (a) An Eligible Employee shall not participate in the Plan prior to the Effective Date the Participating Affiliate adopts the Plan for its Employees.
- (b) An Employee who is in an employment category as set forth below shall not be eligible to participate in the Plan:
  - (1) The President and Vice President of the Navajo Nation, and members of the Navajo Nation Council who are eligible to participate in the Deferred Retirement Plan for Members of the Navajo Nation Council who have not served at least an Hour of Service after January 12, 1999.
  - (2) Employees serving at the pleasure of the President of the Navajo Nation, the Speaker of the Navajo Nation Council, or the Navajo Nation Council, who are eligible to participate in the Deferred Compensation Plan for Certain Employees of

the Navajo Nation who have not served for at least one Hour of Service after February 14, 1989.

- (3) Elected Chapter Officials (President, Vice President, and Secretary).
- (4) Employees who are categorized as employees of the Employer for Federal employment tax purposes only, such as members of the Employer's boards, commissions, and committees, (unless otherwise employed by the Employer as a regular status employee or other eligible employment category).
- (5) Employees whose services are not substantially all in the performance of essential governmental functions, and employees whose services are in the performance of commercial activities (whether or not an essential government function).

3.02 Re-employment - A Participant who incurs a Break in Service and is later re-employed as an Eligible Employee will recommence Participation when he or she again satisfies the conditions of Section 3.01.

3.03 Termination of Participation - A Participant who incurs a Break in Service at a time when he or she is not entitled to a retirement benefit or to a Deferred Vested Benefit shall cease Participation at the close of the first Plan Year in which he or she incurs a Break in Service. A Participant who incurs a Break in Service and who is entitled to a retirement benefit or a Deferred Vested Benefit shall cease Participation upon receipt of payments equal to his total benefit provided hereunder.

3.04 Transfers - A Participant who transfers from the Navajo Nation to a Participating Affiliate, or vice versa, or among the Participating Affiliates, shall accrue benefits under the Plan in accordance with the provisions specified by the Navajo Nation or the Participating Affiliate that employs the Participant at the time the Benefit Service is credited.

3.05 Commissioned Law Enforcement Officers - A Participant who serves as a Commissioned Law Enforcement Officer during a portion or all of his Service shall accrue benefits under the Plan in accordance with the provisions specified for Commissioned Law Enforcement Officers only for the period he or she actually serves as a Commissioned Law Enforcement Officer.

## ARTICLE 4

### Retirement Eligibility and

### Suspension of Benefits

- 4.01 Retirement - A Participant who has reached his Retirement Date shall be entitled to retire and receive benefits in accordance with Article 5.
- 4.02 Suspension of Benefits - Postponed Retirement - If a Participant's Service continues after his Normal Retirement Age and such Service after his Normal Retirement Age constitutes Section 203(a)(3)(B) Service (as defined in Section 4.04), such Participant's benefits will be suspended.
- 4.03 Suspension of Benefits - Re-employment – A person receiving benefits hereunder shall provide written notice to the Plan Administrator within 10 days of becoming re-employed by the Employer.

If a person receiving benefits hereunder is re-employed by the Employer and recommences participation in the Plan, payment of those benefits will be suspended as long as the re-employed Employee remains employed with the Employer and provided such Service constitutes Section 203(a)(3)(B) Service (as defined in Section 4.04). Benefits are to be suspended for each and every month in which the employee performed 40 or more Hours of Service (as described in Section 4.04). However, if re-employed in the Temporary employment category, as defined by personnel policies and procedures, then benefits will not be subject to suspension until 90 days after their first re-employment date after retirement.



If a Participant receives payments that should have been suspended then the overpayment will be corrected in accordance with Internal Revenue Service guidance on correcting such an error. The correction may include the Participant repaying the plan or a reduction in future benefits.

The Plan Administrator shall provide written notice to Plan Participants of the above provisions, which Participants shall sign to acknowledge.

4.04 Section 203(a)(3)(B) Service - In accordance with U.S. Department of Labor Regulations Section 2530.203-3, "Section 203(a)(3)(B) Service" shall be determined on a monthly basis and an Employee shall be deemed to be in Section 203(a)(3)(B) Service in any month in which he or she shall perform 40 or more Hours of Service. If an Employee performs less than 40 Hours of Service in any month, then the Employee shall not be deemed to be in Section 203(a)(3)(B) Service during such months. An Employee shall have the right to contest the determination of his status in accordance with the procedures set forth in Section 11.08 of this Plan.

4.05 Recommencement of Benefits - Benefits which are suspended in accordance with Section 4.02 or 4.03 of this Article shall be paid in any month in which the Employee is not considered to be in Section 203(a)(3)(B) Service. If an Employee whose benefits are suspended under this article thereafter again becomes entitled to benefits hereunder by virtue of a new Early, Normal or Postponed Retirement, the Participant shall be entitled to a new Early, Normal or Postponed Retirement Benefit, as of the Participant's new Early, Normal or Postponed Retirement Date. The



new Early, Normal or Postponed Retirement Benefits shall recommence in the same form of payment that was previously elected for the benefits that had been suspended. The amount of new Early Normal or Postponed Retirement Benefit shall be determined as follows:

A = the single life annuity plan benefit amount determined as of the new and most recent Early, Normal or Postponed Retirement Date, without offset for benefits paid during suspension

B = the single life annuity at the new and most recent Early, Normal or Postponed Retirement Date derived from the present value of benefits paid prior to suspension

C = the plan benefit amount the participant was receiving prior to suspension (in the same form of payment that was previously elected)

D = the single life annuity plan benefit amount payable prior to suspension (same as C if a single life annuity was elected)

**New benefit = prior benefit + any additional amount, corrected for any overpayments,**

**where:**

Prior benefit = C, payable in the same form of payment that was previously elected.

Additional amount =  $A - B - D$ , but not less than 0, expressed as a single life annuity and subject to the optional forms provisions of Article 9.

**The new benefit amount will then be reduced by any correction for overpayments, including amounts that should have been suspended in accordance with Section 4.03. This correction may result in the new benefit being less than the prior benefit in pay.**

## ARTICLE 5

### Amount of Retirement Benefit

5.01 Normal Retirement Benefit - A Participant's Normal Retirement Benefit shall be an annual annuity for the life of the Participant, payable monthly, commencing upon the Participant's Normal Retirement Date, in an amount equal to (a) plus (b), as applicable:

(a) The greater of (i) and (ii):

- (i) 2.0% times the Participant's Final Average Earnings multiplied by the number of years of Benefit Service, excluding any Benefit Service earned by the Participant as a Judge, at Normal Retirement Date.
- (ii) 2.0% times the Participant's Final Average Earnings as of December 31, 2019 multiplied by the number of years of Benefit Service as of December 31, 2019, excluding any Benefit Service earned by the Participant as a Judge, at age 60.

(b) For Judges appointed on or after January 29, 2003, the greater of (i) and (ii):

- (i) 2.5% times the Participant's Final Average Earnings multiplied by the number of years of Benefit Service earned by the Participant as a Judge, up to a maximum of 30 years of Benefit Service, at Normal Retirement Date.
- (ii) 2.5% times the Participant's Final Average Earnings as of December 31, 2019 multiplied by the number of years of Benefit Service earned by the

Participant as a Judge as of December 31, 2019, up to a maximum of 30 years of Benefit Service, at age 60.

Refer to the Historical Plan Provisions in Appendix B for provisions applicable to Judges appointed prior to January 29, 2003.

5.02 Postponed Retirement Benefit - If a Participant continues in Service after his Normal Retirement Date, he or she shall be entitled to a Postponed Retirement Benefit of an annual annuity for life, payable monthly, commencing at his Postponed Retirement Date, in an amount equal to the benefit determined in accordance with Section 5.01 and based on the Participant's Final Average Earnings and the number of years of Benefit Service of the Participant at his Postponed Retirement Date.

5.03 Early Retirement Benefit - A Participant who retires from Service prior to his Normal Retirement Date but on or after attaining the early retirement age as set forth below, shall be entitled to an Early Retirement Benefit, provided the Participant has completed four years of Vesting Service at that time.

|                                       | <u>Early Retirement Age</u> |
|---------------------------------------|-----------------------------|
| Commissioned Law Enforcement Officers | 45                          |
| Other Participants                    | 55                          |

A Participant's Early Retirement Benefit shall be an annual annuity for life, payable monthly, commencing at the Participant's Normal Retirement Date, in an amount equal to the benefit determined in accordance with Section 5.01 and based on the Participant's Final Average Earnings

and the number of years of Benefit Service of the Participant at his Early Retirement Date. At the election of the Participant, the Participant may receive his Early Retirement Benefit as an annuity commencing at his Early Retirement Date, or at any date thereafter, in a reduced amount calculated as the greater of (i) and (ii):

- (i) The Early Retirement Benefit determined under 5.01(a)(i) plus 5.01(b)(i) reduced by 5/12% for each month by which Benefit Commencement Date precedes Normal Retirement Date.
- (ii) The Early Retirement Benefit determined under 5.01(a)(ii) plus 5.01(b)(ii) reduced by 5/12% for each month by which Benefit Commencement Date precedes age 60.

5.04 (a) Deferred Vested Benefit - A Participant who has incurred a Break in Service after he or she has completed four years of Vesting Service shall be entitled to an annual pension benefit, payable as a straight life annuity commencing at Normal Retirement Date equal to the Participant's Accrued Benefit on his Termination Date as calculated in accordance with Section 5.01.

(b) Deferred Vested Benefit - Early Commencement - A Participant entitled to a Deferred Vested Benefit who subsequently satisfies the age requirements for entitlement to an Early Retirement Benefit shall be entitled to elect to receive his Deferred Vested Benefit at a date prior to his Normal Retirement Date, in a reduced amount calculated in accordance with Section 5.03.

5.05 Disability Retirement Benefit for Commissioned Law Enforcement Officers - A Commissioned Law Enforcement Officer who is disabled (while he or she is a Commissioned Law Enforcement Officer) after completing four years of Vesting Service, prior to retirement pursuant to the terms of this Plan,

may elect to retire on the first day of the month after it is determined that he or she is disabled and after Termination of employment, and to receive a monthly benefit payable as described in Section 5.05(a) or Section 5.05(b). A Commissioned Law Enforcement Officer shall be considered disabled if the Social Security Administration determines the Officer is disabled and is eligible to receive OASDI disability benefits. The Social Security disability date must be on or before Termination of employment.

- (a) Service-connected Disability Retirement Benefit - If the proximate cause of the disability occurs while the Commissioned Law Enforcement Officer is on duty, the Disability Retirement Benefit shall be an annual annuity, payable monthly, commencing on the first of the month following the date as of which the disability occurs, as established by the Committee. The benefit shall equal 60% of the Participant's Final Average Earnings, reduced by any and all disability payments received by the Participant under the Social Security Administration and Workers' Compensation and any other benefit program maintained by the Navajo Nation.
  
- (b) Non-Service-connected Disability Retirement Benefit - If the proximate cause of the disability occurs while the Commissioned Law Enforcement Officer is not on duty, the Disability Retirement Benefit shall be an annual annuity, payable monthly, commencing on the first of the month after it is determined that he or she is disabled in an amount equal to the following percentage of the Participant's Final Average Earnings based on the Participant's Benefit Service at the time of disability:

| <u>Years of Benefit Service as a<br/>Commissioned Law Enforcement Officer</u> | <u>Final Average<br/>Earnings Percentage</u> |
|---|--|
| Not more than 6   | 15%  |
| More than 6, but not more than 13   | 30%  |
| More than 13  | 40%  |

Such amount shall be reduced by any and all disability payments received by the Participant under the Social Security Administration and any other benefit program maintained by the Navajo Nation.

- 5.06 Disability Retirement Benefits for Judges - A Judge who is determined to be permanently disabled (while he or she is a Judge) after completing four years of Vesting Service, prior to retirement pursuant to the terms of this Plan, may elect to retire on the first day of the month after it is determined that he or she is permanently disabled and after Termination of employment, and to receive a monthly benefit equal to the Actuarial Equivalent of his Normal Retirement Benefit.

A Judge seeking retirement under Section 5.06 shall provide statements from three different licensed medical doctors attesting to the Judge's diagnosis and prognosis for recovery.

A Judge shall be considered permanently disabled if, based on recommendation by the Chief Justice of the Navajo Nation and the Navajo Nation Judiciary Committee, the Committee determines that the Judge is permanently disabled. For purposes of Section 5.06, "permanently disabled" shall mean the permanent inability of the Judge, by reason of physical or mental incapacity, to perform any substantial part of his ordinary duties as a Judge.



The Committee may, on a biannual basis and in a nondiscriminatory manner formally established by the Committee and Navajo Nation Judiciary Committee, require a Judge retired under Section 5.06 to reaffirm his disability. Failure to comply with the reaffirmation process will result in the suspension of retirement benefits until such time as the reaffirmation is satisfied.

- 5.07 Disability Retirement Benefit for Other Participants - A Participant that is not a Commissioned Law Enforcement Officer or Judge who is disabled (while he or she is employed by the Nation) after completing four years of Vesting Service, prior to retirement pursuant to the terms of this Plan, may elect to retire on the first day of the month after it is determined that he or she is disabled and after Termination of employment, and to receive a monthly benefit equal to the Actuarial Equivalent of his Normal Retirement Benefit. A Participant shall be considered disabled if the Social Security Administration determines the Participant is disabled and is eligible to receive OASDI disability benefits. The Social Security disability date must be on or before Termination of employment.



## ARTICLE 6

### Required Benefit Limitations

6.01 Maximum Annual Defined Benefit Plan Benefits - Notwithstanding any other provision of the Plan, the annual benefit to which a Participant is entitled under the Plan shall not, in any Limitation Year, be in an amount which would exceed the applicable limitations under Section 415 of the Code and regulations thereof. If the benefit payable under the Plan would (but for this Section) exceed the limitations of Section 415 of the Code by reason of a benefit payable under another defined benefit plan aggregated with this Plan under Code Section 415(f), the benefit under this Plan shall be reduced only after all reductions have been made under such other plan. As of January 1 of each calendar year commencing on or after January 1, 2008, the dollar limitation as determined by the Commissioner of Internal Revenue for that calendar year shall become effective as the maximum permissible dollar amount of benefit payable under the Plan during the Limitation Year. The term 'compensation' for purposes of applying the applicable limitations under Section 415 of the Code with respect to any Participant shall mean Limitation Compensation.

Limitation Compensation means any Compensation actually paid or made available to a Participant by the Employer during a Limitation Year, including income from sources outside the United States otherwise excluded from gross income under Code Section 911, but excluding deferred Compensation, stock options and other distributions which receive special tax benefit. Effective as of January 1, 2008, Limitation Compensation shall include amounts required to be recognized under the provisions of U.S. Treasury Department regulation 1.415(c)-2(e) and amounts permitted

to be recognized under the provisions of U.S. Treasury Department regulation 1.415(c)-2(e)(2) and (3) and shall not include any amounts not permitted to be recognized under the provisions of U.S. Treasury Department regulation 1.415(c)-2(e). Additionally, effective as of January 1, 2008, Limitation Compensation shall not exceed the limitation on compensation under Section 401(a)(17) of the Code.

Limitation Year shall mean the calendar year.

## ARTICLE 7

### Vesting

- 7.01 General Rule - A Participant who incurs a Break in Service at a time when he or she is not entitled to an Early, Normal or Postponed Retirement Benefit under the provisions of Article 5 shall not be entitled to benefits under this Plan except as provided under the provisions of this Article.
- 7.02 Vesting at Normal Retirement Age - A Participant who has attained Normal Retirement Age shall be fully vested in his Accrued Benefit.
- 7.03 Vested Portion - A Participant who incurs a Termination at a time when he or she is not entitled to an Early, Normal or Postponed Retirement Benefit under the provisions of Article 5 shall be entitled to a Deferred Vested Benefit, payable as provided under Article 5, which shall be a portion of his Accrued Benefit calculated in accordance with the following table:

If the Participant's  
Years of Vesting Service are:

Less than 4  
4 or more

The Vested  
Portion is:

0%  
100%

- 7.04 Vesting upon Plan Termination - In the event of termination or partial termination of this Plan, each affected Participant shall be 100% vested in his Accrued Benefit, but only to the extent funded. The foregoing sentence shall not apply to a former Participant who has been paid under Section 9.04(e) or who has incurred five consecutive One-year Breaks in Service after his Termination

Date. Such a former Participant shall not be entitled to any additional vested benefit upon termination or partial termination.

## ARTICLE 8

### Qualified Pre-retirement Survivor Annuity

#### 8.01 Automatic Pre-retirement Spousal Death Benefit

(a) Except as provided in subparagraph (b) below, in the event a Participant with a vested right to his Accrued Benefit under the Plan dies before his Benefit Commencement Date, a death benefit shall be provided to the Participant's Spouse as follows:

(1) If the Participant at the date of death was eligible to retire and receive a benefit under the Plan at an Early, Normal or Postponed Retirement Date, then his surviving Spouse shall automatically receive a death benefit in an amount equal to one-half of the amount of retirement benefit which would have been payable to the Participant had he or she retired on the day preceding his death, receiving a benefit in the form of a Joint and Survivor Annuity with a 50% survivor annuity to the Spouse.

(2) If the Participant at the date of death was not eligible to retire under the Plan, then the Participant's surviving Spouse shall receive an automatic spousal death benefit in an amount equal to the amount that would have been payable to the Spouse under the normal form of payment under Section 9.01, assuming:

(i) the Participant had separated from Service on the earlier of his Termination Date or date of his death,

- (ii) the Participant had survived to the earliest date he or she could have retired and received a benefit under the Plan pursuant to Article 5,
- (iii) the Participant retired on such date with a benefit in the form of a Joint and Survivor Annuity with a 50% survivor annuity to the Spouse but calculated using only actual Benefit Service as of the Participant's date of death, and
- (iv) the Participant died on the day after his Benefit Commencement Date. The automatic pre-retirement spousal death benefit under this Section 8.01(a)(2) shall commence to be paid to the Spouse, unless the Spouse elects otherwise, as of the first day of the month coinciding with or next following the earliest date the Participant could have retired and received a benefit under the Plan pursuant to Article 4, had he or she not died, and shall be paid up to the first day of the month in which such Spouse dies. The Spouse may not delay commencement of the pre-retirement spousal death benefit beyond the Participant's Normal Retirement Date.

- (3). In lieu of periodic payments under Section 8.01(a)(1) or 8.01(a)(2), the Spouse will be paid a lump sum if the Actuarial Equivalent Value of periodic payments does not exceed \$5,000 as of the first day of the month coinciding with or next following the date of death. In determining the Actuarial Equivalent Value, the sum total of all Plan benefits should be considered.

- (b) The automatic pre-retirement spousal death benefit payable under this Article 8 shall be payable after the death of the Participant only if the Spouse had been married to the Participant throughout the full one-year period ending on the date of the Participant's death.



## ARTICLE 9

### Forms of Benefit

9.01 Qualified Joint and Survivor Annuity - At the earliest time a Participant could become entitled to commence receiving payments of an Early, Normal or Postponed Retirement Benefit or of a Deferred Vested Benefit, benefits shall commence in the form of a Qualified 50% Joint and Survivor Annuity (which, for a Participant who has no Spouse includes a single life annuity), unless the Participant, with the consent of his Spouse, if any, elects otherwise. Any consent of the Participant's Spouse shall be made within 90 days of the date the Qualified 50% Joint and Survivor Annuity would otherwise commence, and shall be executed in accordance with the rules of Section 9.03.

9.02 Right to Elect - In lieu of the benefits provided by Section 9.01, the Participant shall have the right to elect, prior to his Benefit Commencement Date, an alternative form of benefit provided under the terms of this Article 9. If the Participant is married, any such election, except for a Qualified Joint and Survivor Annuity, may be made only with the consent of his Spouse, executed as provided under Section 9.03. Any alternative form of benefit shall be the Actuarial Equivalent of the Participant's Accrued Benefit.

9.03 Election of Forms - A Participant may make or revoke an election of any form of benefit to which the Participant is entitled under this Article 9 in writing to the Committee or its delegatee, and such election or revocation shall be subject to the following conditions:

- (a) The Committee shall furnish to each Participant a general written explanation in non-technical terms of the availability of the various optional forms of payment under the Plan at least 30 days but no more than 90 days prior to the Participant's Benefit Commencement Date. For Plan Years beginning after December 31, 1996, the 30-day period described in the preceding sentence shall be modified as follows: (i) The written explanation may be provided to the Participant after his Benefit Commencement Date as long as the Participant is permitted to change his benefit election during the 30-day period following the date the explanation is provided; and (ii) the Participant may waive the 30-day period as long as distribution of his benefit commences more than seven days after the explanation is provided.
- (b) An election to receive an optional form of benefit may be made at any time during the election period. The election period begins 90 days prior to the Participant's Benefit Commencement Date and ends on the later of the Participant's Benefit Commencement Date or the last day of the 30-day period (or shorter period if the 30-day period is waived by the Participant) described in subsection (a) above. Subject to subsection (c) below, the Participant may change his benefit election, including waiver of the Qualified Joint and Survivor Annuity and revocation of any previous election, and make a new election at any time until the expiration of the election period.
- (c) If a Participant is married, an election of a form of benefit other than the Qualified Joint and Survivor Annuity will require the written consent of the Spouse, and such written consent must be witnessed by a notary public or a representative of the Plan.

9.04 Optional Forms of Retirement Benefit - The optional forms that a Participant may elect are anyone of the following:

- (a) Joint and Survivor Annuity Option - An Actuarial Equivalent monthly benefit payable to the Participant for life, and after his death in 100%, or 75% or 50% of such amount as specified by the Participant, to the Joint Annuitant for life. Should the Joint Annuitant die prior to the Participant's Benefit Commencement Date, any election of this option shall be automatically canceled. If the Participant should die prior to the Benefit Commencement Date, no payments shall be made under this option to the Joint Annuitant, but if the Joint Annuitant is the Spouse of the Participant, such Spouse will be entitled to the death benefit provided under Article 8.
- (b) Straight Life Annuity Option - A Participant who has a Spouse may elect to have the Participant's retirement benefit payable in equal unreduced monthly payments during the Participant's lifetime, with no further payments to any other person after the Participant's death. If this option is elected, the retirement benefit payable to the Participant shall be the amount of retirement benefit determined under the applicable Section(s) of Article 5.
- (c) Ten Year Certain and Life Annuity - An Actuarial Equivalent monthly benefit payable to the Participant for life, and ~~that~~ in the event the Participant dies within 10 years of the Benefit Commencement Date, the Beneficiary the Participant designated shall receive a survivor benefit which is equal to the amount the Participant was receiving at the time of his death payable monthly until the date 10 years from the Participant's Benefit Commencement Date. If the Participant designated more than one Beneficiary, the monthly payment shall

be divided equally among the Beneficiaries. If the Participant does not die within 10 years of the Benefit Commencement Date, there shall be no survivor benefit. If one or more of the Beneficiaries the Participant designated dies before the termination of the survivor benefit described in this Section Article 9.04(c), the monthly payment shall be divided equally among the surviving Beneficiaries.

- (d) Fifteen Year Certain and Life Annuity – An Actuarial Equivalent monthly benefit payable to the Participant for life and if the Participant dies within 15 years of the Benefit Commencement Date, the Beneficiary the Participant designated shall receive a survivor benefit which is equal to the amount the Participant was receiving at the time of his death payable monthly until the date 15 years from the Participant's Benefit Commencement Date. If the Participant designated more than one Beneficiary, the monthly payment shall be divided equally among the Beneficiaries. If the Participant does not die within 15 years of the Benefit Commencement Date, there shall be no survivor benefit. If one or more of the Beneficiaries the Participant designated dies before the termination of the survivor benefit described in this Section 9.04(c), the monthly payment shall be divided equally among the surviving Beneficiaries.

- (e) In lieu of periodic payments under Article 5, a Participant who has attained Retirement Age (Normal or Early) or is disabled under Section 5.05 or 5.06 will be paid a lump sum if the Actuarial Equivalent Value of periodic payments does not exceed \$5,000. In determining the Actuarial Equivalent Value, the sum total of all plan benefits should be considered. A Participant whose distribution is subject to the provisions of this Section 9.04(e) may elect to have such distribution paid directly to an eligible retirement plan specified by the

Participant in a direct rollover or to receive the distribution directly. If the Participant fails to make such election, the Committee will pay the distribution in a direct rollover to an individual retirement plan designated by the Committee.

9.05 Eligible Rollover Distributions

- (a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 9.05, a distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions

- (1) Eligible rollover distribution - An eligible rollover distribution is 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; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

Effective for distributions made on or after January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such a portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (2) Eligible retirement plan - An eligible retirement plan 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 annuity plan described in Section 403(a) of the Code or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity only.

Effective for distributions made on or after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts



transferred into such plan from this Plan. 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.

- (3) Distributee - 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 or former Spouse 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 or former Spouse.
- (4) Direct rollover - A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.



## ARTICLE 10

### Funding

- 10.01 Funding Agreement - The Employer has entered into a funding arrangement with one or more Funding Agents providing for the administration of the Fund or Funds in which the assets of this Plan are held. The Employer may at any time or from time to time appoint one or more investment managers, each of which shall direct the Funding Agent in the investment or reinvestment of all or part of the Fund. The Employer shall make contributions to the Plan on an annual basis sufficient to pay normal pension costs plus interest on unfunded past service liabilities.
- 10.02 Non-diversion of the Fund - To the extent required by law, the principal or income of any Fund shall be used solely for the exclusive benefit of Participants or Beneficiaries, or to meet the necessary expenses of the Plan, except that upon termination of the Plan, after all the liabilities under the Plan have been satisfied, any property remaining in a Fund after satisfaction of all liabilities under this Plan shall be considered the result of erroneous actuarial computation and shall be distributed by the Funding Agent to the Employer.

## ARTICLE 11

### Plan Administration

11.01 Appointment of Committee - The Retirement Plan Administration Committee, hereinafter referred to as Committee, shall consist of:

- (a) The Chairperson, Budget and Finance Committee
- (b) The Vice Chairperson, Budget and Finance Committee
- (c) The Controller, Division of Finance
- (d) The Director, Department of Personnel Management
- (e) The Director, Division of Community Development
- (f) Chief Justice, Judicial Branch

Person (a) shall serve as Chairperson of the Committee; person (b) shall serve as Vice Chairperson of the Committee.

11.02 Powers and Duties

- (a) The Committee shall have full power to administer the Plan and to construe and apply all of its provisions on behalf of the Employer in adherence to Navajo Nation laws. The Committee's powers and duties, unless properly delegated, shall include, but shall not be limited to:

- (1) Designating agents to carry out responsibilities relating to the Plan, other than fiduciary responsibilities.
- (2) Deciding questions relating to eligibility, continuity of employment, and amounts of benefits.
- (3) Deciding disputes that may arise with regard to the rights of Employees, Participants and their legal representatives, or Beneficiaries under the terms of the Plan. Decisions by the Committee will be deemed final in each case.
- (4) Obtaining information from the Employer with respect to its Employees as necessary to determine the rights and benefits of Participants under the Plan. The Committee may rely conclusively on such information furnished by the Employer.
- (5) Compiling and maintaining all records necessary for the Plan.
- (6) Authorizing the Funding Agent to make payment of all benefits as they become payable under the Plan.
- (7) Engaging such legal, administrative, consulting, actuarial, investment, accounting and other professional services as the Committee deems proper.

- (8) Adopting rules and regulations for the administration of the Plan that are not inconsistent with the Plan. The Committee may, in a nondiscriminatory manner, waive the timing requirements of any notice or other requirements described in the Plan. Any such waiver will not obligate the Committee to waive any subsequent timing or other requirements for other Participants.
  - (9) Interpreting and approving Domestic Relations Orders.
  - (10) Making non-substantive amendments for the purposes of maintaining the qualified status of the Plan only.
  - (11) Performing other actions provided for in other parts of this Plan.
- (b) The Employer shall have responsibility for, and shall be the Named Fiduciary for, the following purposes:
- (1) Selection of the funding media for the Plan, including the power to direct investments and to appoint an investment manager.
  - (2) Allocating fiduciary responsibilities, other than trustee responsibilities, among fiduciaries, and designation of additional fiduciaries.
  - (3) Selection of insurance contracts to provide benefits hereunder, or, if all assets are not held under insurance contracts, the Trustee.

(c) The Trustee, if any, shall have responsibility for, and shall be the Named Fiduciary for the care and custody of, and, to the extent investment managers are not appointed by the Employer, management of Plan assets held by such Trustee other than insurance contracts in adherence with Navajo Nation laws.

11.03 Actions by the Committee - A majority of the members composing the Committee at any time will constitute a quorum. The Committee may act at a meeting, or in writing without a meeting, by the vote or assent of a majority of its members. The Committee will have authority to designate in writing one of its members or any other person as the person authorized to execute papers and perform other ministerial duties on behalf of the Committee.

11.04 Interested Committee Members - No member of the Committee will participate in an action of the Committee on a matter which applies solely to that member. Such matters will be determined by a majority of the remainder of the Committee.

11.05 Indemnification - The Employer, by the adoption of this Plan, indemnifies and holds the members of the Committee, jointly and severally, harmless from the effects and consequences of their acts, omissions and conduct in their official capacities, except to the extent that the effects and consequences result from their own willful misconduct, breach of good faith, or gross negligence in the performance of their duties. The foregoing right of indemnification will not be exclusive of other rights to which each such member may be entitled by any contract or other instrument or as a matter of law.

11.06 Conclusiveness of Action - Any action on matters within the discretion of the Committee will be conclusive, final and binding upon all Participants in the Plan and upon all persons claiming any rights, including Beneficiaries.

11.07 Payment of Expenses - The members of the Committee will serve without compensation for their services. The compensation or fees of consultants, actuaries, accountants, counsel and other specialists and any other costs of administering the Plan or Fund, will be paid by the Fund unless, at the discretion of the Committee, paid by the Employer.

11.08 Claims Procedures

- (a) Filing a Claim. All claims shall be filed in writing by the Participant, his Beneficiary or the authorized representative of the claimant, by completing the procedures that the Committee requires. The procedures shall be reasonable and may include the completion of forms and the submission of documents and additional information. All claims under this Plan shall be filed in writing with the Plan Administrator according to the Committee's procedures. Claims arising on and after January 1, 2002 shall be filed in writing with the Plan Administrator according to the Committee's procedures no later than one year after the occurrence of the event that gives rise to the claim. If the claim is not filed within the time described in the preceding sentence, the claim shall be barred.



(b) Review of Initial Claim

- (1) Initial Period for Review of the Claim. The Plan Administrator shall review all materials and shall decide whether to approve or deny the claim. If a claim is denied in whole or in part, written notice of denial shall be furnished by the Plan Administrator to the claimant within a reasonable time after the claim is filed but not later than 90 days after the Plan Administrator receives the claim. The notice shall set forth the specific reason(s) for the denial, reference to the specific Plan provisions on which the denial is based, a description of any additional material or information necessary for the claimant to perfect his claim and an explanation of why such material or information is necessary, and a description of the Plan's review procedures, including the applicable time limits and, for claims filed on and after January 1, 2002, a statement of the claimant's right to pursue the claim as a civil action in the Courts of the Navajo Nation following a denial of the appeal under subsection (c) below.
- (2) Extension. If the Plan Administrator determines that special circumstances require an extension of time for processing the claim, it shall give written notice to the claimant and the extension shall not exceed 90 days. The notice shall be given before the expiration of the 90-day period described in subparagraph (b)(1) above and shall indicate the special circumstances requiring the extension and the date by which the Plan Administrator expects to render its decision.

(c) Appeal of Denial of Initial Claim. In the event a claim is denied, the claimant may appeal the denial by requesting a review of the denied claim. All such requests for review must be in writing and adhere to the Committee's procedures. The claimant may review pertinent documents, and may submit issues or comments in writing. The claimant must request a review within the reasonable period of time prescribed by the Committee. In no event shall such a period of time be less than 60 days.

(d) Review of Appeal

(1) Initial Period for Review of the Appeal. The Committee shall conduct all requested reviews of denied claims and shall render its decision within a reasonable time, but not less than 60 days of the receipt of the appeal by the Committee. The claimant shall be notified of the Committee's decision in a written notice, which shall set forth the specific reason(s) for the denial, reference to the specific Plan provisions on which the denial is based, a statement that the co-claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records and other information relevant to the claimant's claim, and, for claims filed on and after January 1, 2002, a statement of the claimant's right to pursue the claim as a civil action in the Courts of the Navajo Nation following a denial of the appeal under subsection (c) above.

(2) Extension. If the Committee determines that special circumstances require an extension of time for reviewing the appeal, it shall give written notice to the claimant and the extension shall not exceed 60 days. The notice shall be given

before the expiration of the 60-day period described in subparagraph (d)(1) above and shall indicate the special circumstances requiring the extension and the date by which the Committee expects to render its decision.

- (e) Form of Notice to Claimant. The notice to the claimant shall be given in writing and shall be written in a manner that can be understood by the claimant.
- (f) Discretionary Authority of Committee. The Committee shall have full discretionary authority to determine eligibility, status and the rights of all individuals under the Plan, to construe any and all terms of the Plan, and to find and construe all facts.

## ARTICLE 12

### Funding Policy and Contributions

- 12.01 Employer Contributions - The Nation and each Participating Affiliate intend to make contributions to fund this Plan at such times and in such amounts as determined by the Actuary in accordance with the pension expense policy as determined by the Employer. Any actuarial gains arising under the Plan shall be used to reduce future Employer contributions to the Plan and shall not be applied to increase retirement benefits with respect to remaining Participants.
- 12.02 Suspension of a Participating Affiliate - Participating Affiliate contributions are due after the close of each quarter. If a Participating Affiliate fails to make the required Employer Contribution payments by 60 days after the contribution deadline, then on the first day of the first calendar month after the 60-day period, the Plan Administrator shall suspend its status as a Participating Affiliate in the Plan. Contributions made by the Participating Affiliate will not be refunded from the Plan due to suspension. However, service under the plan shall be counted for periods when contributions were made timely. The Plan Administrator shall notify the Participating Affiliate in writing that it is suspended and shall inform the Participating Affiliate of the requirements for reinstatement of status as a Participating Affiliate.
- 12.03 Reinstatement of a Participating Affiliate - To be reinstated after a suspension, the Participating Affiliate must provide the Plan Administrator with: (1) a memo explaining the reasons for the Participating Affiliate's failure to make timely Employer Contribution payments, and what procedures are in place to guarantee timely payments in the future; (2) a resolution requesting

reinstatement as a Participating Affiliate; and (3) a complete payment of all past due Employer Contributions plus accrued interest in accordance with Section 12.05.

12.04 Revoking the Status of a Participating Affiliate - The Participating Affiliate shall only be eligible for reinstatement twice. The third time the Participating Affiliate fails to make the required Employer Contribution payments by 60 days after the contribution deadline, the Plan Administrator shall recommend that the Committee revoke the entity's status as a Participating Affiliate. The Committee shall have the authority to permanently revoke the status of a Participating Affiliate such that its employees are no longer eligible to participate in the Plan.

12.05 No Credit for Service When Employer Contributions Are Untimely - During periods when a Participating Affiliate's Employer Contributions are not made timely pursuant to the terms of the Funding Agreement, the Employees of such Employer shall not be credited for Service. However, Service can be restored if the Employer becomes current by paying the late payments in full plus interest accrued at a rate of one percent (1%) interest for each month late following the close of each quarter. The interest payment shall become due and owing upon the suspension of a Participating Affiliate, and accrued interest must be paid to reinstate the suspended Affiliate.

12.06 Participant Contributions - Participant contributions to the Fund are not required or permitted under the Plan, except for a benefit service credit purchase in accordance with Appendix E.

## ARTICLE 13

### Amendment, Termination and Merger of the Plan

- 13.01 Right to Amend the Plan - The Employer reserves the right to modify, alter or amend this Plan from time to time to any extent that it may deem advisable including, but without limiting the generality of the foregoing, any amendment deemed necessary to ensure the continued qualification of the Plan under Section 401 of the Code or the appropriate provisions of any subsequent revenue law. No such amendment shall increase the duties or responsibilities of a Funding Agent without its consent thereto in writing. No such amendment(s) shall allow any portion of the principal or income of the Fund to be used for any purposes other than for the exclusive benefit of Participants or Beneficiaries at any time prior to the satisfaction of all the liabilities under the Plan with respect to such persons. No amendment shall (a) reduce a Participant's Accrued Benefit on the effective date of the Plan amendment, (b) eliminate or reduce an early retirement benefit, retirement-type subsidy or an optional form of benefit under the Plan with respect to the Participant's Accrued Benefit on the date of the amendment, or (c) reduce a retired Participant's retirement benefit as of the effective date of the amendment. This Plan shall be amended only upon a resolution of the Committee recommending such amendment to the Budget and Finance Committee, and a resolution of the Budget and Finance Committee approving and adopting the amendment.
- 13.02 Right to Terminate the Plan - The Employer shall have the right to terminate this Plan at anytime. In the event of such termination all affected Participants shall be vested as provided in Section 7.04.



## ARTICLE 14

### Miscellaneous

14.01 Limitation on Distributions - Notwithstanding any provision of this Plan regarding payment to Beneficiaries or Participants, or any other person, the Committee may withhold payment to any person if the Committee determines that such payment may expose the Plan to conflicting claims for payment. As a condition for any payments, the Committee may require such consent, representations, releases, waivers or other information as it deems appropriate. The Committee may, at its discretion, comply with the terms of any judgment or other judicial decree, order, settlement or agreement, including, but not limited to, a Domestic Relations Order.

14.02 Limitation on Reversion of Contributions - Except as provided in subsections (a) and (b) below, Employer contributions made under the Plan will be held for the exclusive benefit of Participants, Joint Annuitants or Beneficiaries and may not revert to the Employer.

(a) A contribution made by the Employer under a mistake of fact may be returned to the Employer within one year after it is contributed to the Plan, to the extent that it exceeds the amount which would have been contributed, absent the mistake in fact.

(b) A contribution conditioned on the Plan's initial qualification under Sections 401(a) and 501(a) of the Code may be returned to the Employer, if the Plan does not qualify, within one year after the date the Plan is denied qualification.

Earnings attributable to amounts which may be returned to the Employer pursuant to this Section may not be distributed; but, in the event that there are losses attributable to such amounts, the amount returned to the Employer shall be reduced by the amount of such losses.

14.03 Voluntary Plan - The Plan is purely voluntary on the part of the Employer and neither the establishment of the Plan nor any Plan amendment nor the creation of any Fund or account, nor the payment of any benefits will be construed as giving any Employee or any person legal or equitable right against the Employer, any Trustee or other Funding Agent, or the Committee unless specifically provided for in this Plan or conferred by affirmative action of the Committee or the Employer according to the terms and provisions of this Plan. Such actions will not be construed as giving any Employee or Participant the right to be retained in the Service of the Employer. All Employees and/or Participants will remain subject to discharge to the same extent as though this Plan had not been established.

14.04 Non-alienation of Benefits - Participants and Beneficiaries are entitled to all the benefits specifically set out under the terms of the Plan, but neither those benefits nor any of the property rights in the Plan are assignable or distributable to any creditor or other claimant of a Participant or Beneficiary. A Participant will not have the right to anticipate, assign, pledge, accelerate or in any way dispose of or encumber any of the monies or benefits or other property that may be payable or become payable to such Participant or his Beneficiary provided, however, the Committee shall recognize and comply with a valid Domestic Relations Order. Effective with judgments, orders, decrees and settlement agreements entered into on or after August 5, 1997, this Section 14.04 shall not apply with respect to any offset to a Participant's benefits expressly provided for in a judgment, order, decree or settlement agreement described in Section 401(a)(13)(C) of the Code.

Notwithstanding the above, the requirements of this subsection 14.04 shall not preclude the following:

- (a) the enforcement of a federal tax levy made pursuant to Section 331 of the Code; or
- (b) the collection by the United States on a judgment resulting from an unpaid tax assessment.

14.05 Release of Benefits - If a person entitled to receive any benefits under the Plan has been adjudged physically or mentally incompetent by a court of competent jurisdiction and has a duly appointed guardian or custodian, benefits will be released to the person or institution so duly appointed.

14.06 Missing Persons - If the Committee is unable, after reasonable and diligent effort, to locate a Participant, Joint Annuitant or Beneficiary where no contingent Beneficiary is provided under the Plan, who is entitled to a distribution under the Plan, the distribution due such person will be forfeited after five years. If, however, such a person later files a claim for such benefit, it will be reinstated without any interest earned thereon. In the event that a distribution is due to a Beneficiary where a contingent Beneficiary is provided under the Plan (including the situation on which the contingent Beneficiary is the Participant's estate), and the Committee is unable, after reasonable and diligent effort, to locate the Beneficiary, the benefit shall be payable to the contingent Beneficiary, and such non-locatable Beneficiary shall have no further claim or interest hereunder. Notification by certified or registered mail to the last known address of the Participant or Beneficiary will be deemed a reasonable and diligent effort to locate such person.

- 14.07 Limitation of Third Party Rights - Nothing expressed or implied in the Plan is intended or will be construed to confer upon or give to any person, firm or association other than the Employer, the Participants or Beneficiaries, any right, remedy or claim under or by reason of this Plan except pursuant to a Domestic Relations Order.
- 14.08 Invalid Provisions - In case any provision of this Plan is held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining parts of the Plan. The Plan will be construed and enforced as if the illegal and invalid provisions had never been included.
- 14.09 One Plan - This Plan may be executed in any number of counterparts, each of which will be deemed an original and the counterparts will constitute one and the same instrument and may be sufficiently evidenced by any one counterpart.
- 14.10 Use and Form of Words - Whenever any words are used herein in the masculine gender, they will be construed as though they were also used in the feminine gender in all cases where that gender would apply, and vice versa. Whenever any words are used herein in the singular form, they will be construed as though they were also used in the plural form in all cases where the plural form would apply, and vice versa.
- 14.11 Headings - Headings to Articles and Sections are inserted solely for convenience and reference, and in the case of any conflict, the text, rather than the headings, shall control.
- 14.12 Governing Law - The Plan will be construed according to the federal laws governing Employee benefit plans qualified under the Code and governed according to the laws of the Navajo Nation.



IN WITNESS WHEREOF, the Navajo Nation has adopted this Plan effective April 1, 2019.

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ATTEST:

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name  
Chairperson  
Budget and Finance Committee  
Navajo Nation Council

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name:  
Chairperson  
Retirement Plan Administration Committee



APPENDIX A

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

|                                       |                       |                             |
|---------------------------------------|-----------------------|-----------------------------|
| Navajo Nation Central Government      | July 1, 1973          |                             |
| <u>Participating Affiliates</u>       | <u>Effective Date</u> | <u>Ceased Participation</u> |
| Navajo Agricultural Products Industry | July 1, 1977          | May 31, 2003                |
| Navajo Arts and Crafts Enterprises    | July 1, 1974          | September 30, 2007          |
| Navajo Forest Products Industries     | July 1, 1973          | April 30, 1995              |

Effective December 2, 1997, the Retirement Plan Administration Committee approved RCJY-41-97 which merged the Navajo Forest Products Industries Participants with the Navajo Nation Central Government Participants. For purposes of Sections 1.01, 1.27 and 2.03, and Article 5, the Navajo Forest Products Industries Participants are treated as though their Navajo Forest Products Industries employment was Navajo Nation Central Government employment effective December 2, 1997.

Effective May 31, 2003, accrual of benefits shall cease, and no further entry into the Plan shall be allowed after May 31, 2003 for Employees of the Navajo Agricultural Products Industry. For purposes of Section 2.02, a Participant who continues employment with Navajo Agricultural Products Industry, the Company, or any Participating Affiliate, after May 31, 2003 shall continue to earn Vesting Service under the Plan with respect to benefits accrued through May 31, 2003. Navajo Agricultural Products Industry shall continue to make contributions to the Plan in accordance with Article 12 of the Plan.

Effective September 30, 2007, accrual of benefits shall cease, and no further entry into the Plan shall be allowed after September 30, 2007 for Employees of the Navajo Arts and Crafts Enterprises. For purposes of Section 2.02, a Participant who continues employment with Navajo Arts and Crafts Enterprises, the Company, or any Participating Affiliate, after September 30, 2007 shall continue to earn Vesting Service under the Plan with respect to benefits accrued through September 30, 2007. Navajo Arts and Crafts Enterprises shall continue to make contributions to the Plan in accordance with Article 12 of the Plan.

Effective February 1, 2016, any Employee of an Affiliate that has ceased participation in the Plan and who has accrued a vested benefit that is frozen will be entitled to commence his benefit on the first of any month coincident with or next following attainment of his Normal Retirement Age.

In addition, pursuant to 1.07 and 1.40 of the Plan, certified Chapters that have adopted the Plan and the Funding Agreement shall benefit under the Plan as Participating Affiliates with the approval of the Committee and only for periods during which the following conditions are met:

- Plan adoption is in place and on file with the Retirement Office; and
- Chapter contributions are made timely pursuant to the terms of the Funding Agreement.

HISTORICAL PLAN PROVISIONS

- 1.04 Actuarial Equivalent Value. The 1976 Plan document does not specifically state the interest rate and mortality table used to determine the Actuarial Equivalent Value.
- 1.07 Affiliate. Prior to January 1, 2007, Affiliate included organizations associated with the Navajo Nation whose management board or executive officers were answerable to the Navajo Nation Council.
- 1.19 Early Retirement Date was:  
Commissioned Law Enforcement Officers - Age 45 with seven years of Service  
Other Participants - Age 55 with seven years of Service in the 1976 Plan statement.
- 1.27 Final Average Earnings. Prior to October 1, 1989, the averaging period was 60 months instead of 36 months.
- 1.33 "Judge's Final Pay" shall apply only to Judges appointed prior to January 29, 2003 and shall mean the product of 12 times the average of a Judge's monthly Earnings for the last 12 months of Benefit Service. In calculating the Judge's Final Pay for a Judge whose Benefit Service was separated by periods of Non-benefit Service or Period of Severance, such Judge's Benefit Service shall be considered to be consecutive.

- 1.35 Normal Retirement Age. Prior to October 1, 1989, the Normal Retirement Age for Other Participants was 65.
- 1.36 "Normal Retirement Age" means 55 for Judges whose Employment Commencement Date is prior to January 29, 2003.
- 1.41 Plan. Prior to October 1, 1989, the Plan was entitled Retirement Plan for Employees of the Navajo Tribe and Certain of its Affiliates.
- 2.03 Benefit Service. Prior to October 1, 1999, unused sick leave not credited as Benefit Service.
- 2.04 Non-benefit Service. Prior to October 1, 1999, there was no formal Benefit Service exclusion for Elected Chapter Officials.
- 3.01 Eligibility to Become a Participant. Prior to October 1, 1999, there was no eligibility exclusion for Elected Chapter Officials. In the 1976 Plan statement, there was a 12-month wait to participate for those hired after June 30, 1976.

- 5.01 Normal Retirement Benefit. The Service multiplier has changed twice under the Plan:

| <u>Effective Date</u> | <u>Service Prior to 10/1/84</u> | <u>Service After 10/1/84</u> |
|-----------------------|---------------------------------|------------------------------|
| 10/1/89               | 2%                              | 2%                           |
| 10/1/84               | 2%                              | 1.25%                        |
| Prior to 10/1/84      | 1.25%                           | 1.25%                        |

For Judges whose Employment Commencement Date is prior to January 29, 2003; the Judge's Benefit Percentage times the Judge's Final Pay. The Judge's Benefit Percentage shall be equal to (1) plus (2) where:

(1) is the lesser of 8 and the number of years of Benefit Service as a Judge, divided by 16 years; and

(2) is the number of years of Benefit Service as a Judge in excess of 8 years, divided by 14 years.

Judges whose Employment Commencement Date is prior to January 29, 2003 with less than eight years of Vesting Service are not eligible for retirement benefits.

5.02 Postponed Retirement Benefit. The 1976 Plan statement froze benefits at the Normal Retirement Age.

5.03 Prior to October 1, 1989, the early retirement reduction factors were:

| Months by which Early Retirement precedes Normal Retirement Date | Percentage reduction for each month prior to Normal Retirement Date for Employees whose Normal Retirement Age is: |   |
|--|---|---|
|  | <u>65</u>   | <u>55</u>                               |
| First 60 months  | Sixty-five one-hundredths of 1% (.65%)  | Fifty-five one-hundredths of 1% (.55%)  |
| Months in excess of 60   | Thirty-five one-hundredths of 1% (.35%)   | Thirty-five one-hundredths of 1% (.35%) |

5.04 Prior to October 1, 1984, a Participant did not vest until completing seven years of Vesting Service.

5.05 Prior to October 1, 1999, the eligibility for disability retirement was five years of Vesting Service.

The benefit was the Accrued Benefit reduced actuarially for immediate payment.

7.02 The 1976 Plan statement vested Participants at age 65.

7.03 Prior to October 1, 1984, a Participant did not vest until completing seven years of vesting.

8.01(a)(2) Prior to October 1, 1984, there was no pre-retirement death benefit for a Participant who died prior to the Early, Normal or Postponed Retirement Date.

9.04(c) The 1976 Plan statement specified the limit for lump sum cashouts as \$1,750. Prior to October 1, 1999, the actuarial equivalence definition was 6% and 1971 TPF&C Forecast Mortality Table.

APPENDIX C The Plan was amended to provide automatic Cost-of-Living Adjustments (COLA) to Participants (and their Beneficiaries) who retired from active Service prior to October 1, 1996, effective October 1, 2006. In addition, a one-time 2% COLA was effective October 1, 2014.



APPENDIX D      The Plan was amended to adopt a Special Retirement Program (SRP) 2009 to provide incentive for eligible employees to retire voluntarily during a window period with enhanced benefits.

APPENDIX E      The Plan was amended to adopt a Benefit Service Credit Purchase provision which provides eligible participants with the option to purchase "Benefit Service Credit" for periods of intervening service in the U.S. Armed Forces and for periods of service with another Indian Tribal, Federal, State, or local government or governmental agency if that service was not otherwise credited under that government's retirement plan.

APPENDIX F      The Plan was amended to adopt the Enhanced Retirement Program ("ERP") of 2021.

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

COST OF LIVING ADJUSTMENTS ("COLA")

C.1 COLA Eligible Retiree

COLA Eligible Retiree shall mean a retired Participant, or the Beneficiary of a retired Participant, who meets the following conditions:

- (a) retired directly from active Service with the Navajo Nation; and
- (b) retired on or before October 1, 1996; and
- (c) has not been re-employed by the Navajo Nation and subsequently retired after October 1, 1996.

C.2 Schedule of Cost of Living Adjustments

The determination of the COLA to be applied to the benefit of a COLA Eligible Retiree shall be determined with reference to the following Retirement schedule:

| <u>Retirement Date</u>                           | <u>COLA Increase</u> |
|--|----------------------|
| Retired on or prior to 10/1/86                   | 2.50%                |
| Retired after 10/1/86 but on or prior to 10/1/87 | 2.25%                |
| Retired after 10/1/87 but on or prior to 10/1/88 | 2.00%                |
| Retired after 10/1/88 but on or prior to 10/1/89 | 1.75%                |
| Retired after 10/1/89 but on or prior to 10/1/90 | 1.50%                |
| Retired after 10/1/90 but on or prior to 10/1/96 | 1.25%                |

For purposes of applying this schedule, Retirement Date shall mean the Eligible Retiree's most recent Retirement Date from the Navajo Nation.

C.3 COLA Increase Effective October 1, 2005

A one-time COLA increase shall be applied to the benefits in payment status for COLA Eligible Retirees as of October 1, 2005 in accordance with the following Retirement schedule:

| <u>Retirement Date</u>                           | <u>COLA Increase</u> |
|--|----------------------|
| Retired on or prior to 10/1/86                   | 7.50%                |
| Retired after 10/1/86 but on or prior to 10/1/87 | 6.75%                |
| Retired after 10/1/87 but on or prior to 10/1/88 | 6.00%                |
| Retired after 10/1/88 but on or prior to 10/1/89 | 5.25%                |
| Retired after 10/1/89 but on or prior to 10/1/90 | 4.50%                |
| Retired after 10/1/90 but on or prior to 10/1/96 | 3.75%                |

For purposes of applying this schedule, Retirement Date shall mean the Eligible Retiree's most recent Retirement Date from the Navajo Nation.

C.4 Annual COLA Increases After October 1, 2005

Effective October 1, 2006, and each October 1 thereafter, the benefit in payment status of each COLA Eligible Retiree may be increased in accordance with the schedule set forth in Section C.2 of this Appendix C upon approval of the Plan Administrator. Effective October 1, 2014, an additional, one-time 2% COLA will be provided to all COLA Eligible Retirees.

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

SPECIAL RETIREMENT PROGRAM (SRP) 2009

D.1 Purpose

The purpose of the Special Retirement Program is to provide incentive for Eligible Participants to retire on a voluntary basis. Eligible Participants who elect to retire during the Window Period shall receive SRP Benefit Enhancements under the Plan.

D.2 Eligible Participant

A Participant who meets all the following conditions shall be eligible to participate in the Special Retirement Program:

- (a) Is actively employed by the Navajo Nation Central Government on October 31, 2009;
- (b) Is not a Judge, a Commissioned Law Enforcement Officer, Council Delegate or political appointee of the Navajo Nation;
- (c) Has attained the age of 55 as of December 31, 2009; and
- (d) Has been credited with at least ten years of Benefit Service as of December 31 2009.

D.3 Window Period

An Eligible Participant will be entitled to the SRP Benefit Enhancements described in Section D.4 provided the Participant makes an election between November 1, 2009 and December 15, 2009 to

retire from Service on or before January 1, 2010. An Eligible Participant may revoke his/her election within seven (7) calendar days after the original election is made.

#### D.4 SRP Benefit Enhancements

An Eligible Participant who retires from Service during the Election Period shall be entitled to the following SRP Benefit Enhancements:

- (a) For purposes of calculating the Participant's Normal Retirement Benefit, in accordance with Section 5.01 and based on the Participant's Final Average Earnings and the number of years of Benefit Service of the Participant at his Retirement Date, the Participant's number of years of Benefit Service shall be increased by three (3).
- (b) For purposes of calculating the Participant's Postponed Retirement Benefit, if applicable, in accordance with Section 5.02 and based on the Participant's Final Average Earnings and the number of years of Benefit Service of the Participant at his Postponed Retirement Date, the Participant's number of years of Benefit Service shall be increased by three (3).
- (c) For purposes of calculating the Participant's Early Retirement Benefit, if applicable, in accordance with Section 5.03 and based on the Participant's Final Average Earnings and the number of years of Benefit Service of the Participant at his Early Retirement Date, the Participant's number of years of Benefit Service shall be increased by three (3).

At the election of the Participant, the Participant may receive his Early Retirement Benefit as an annuity commencing at his Early Retirement Date, or at any date thereafter, in a

reduced amount calculated by reducing the Early Retirement Benefit by 5/12% for each month by which SRP Benefit Commencement Date precedes Normal Retirement Date. For purposes of calculating the reduction for Early Retirement Benefit under this Section D.4(c) only, the SRP Benefit Commencement Date shall be deemed to be 24 months later than the Benefit Commencement under Section 1.10, but not later than the Normal Retirement Date.

D.5 Commencement of SRP Benefit Enhancements

Any SRP Benefit Enhancements payable under this Appendix D shall commence at the same Benefit Commencement Date elected by the Participant for benefits payable pursuant to Section 5.01, 5.02, or 5.03 of the Plan.

D.6 Form of Payment

Any SRP Benefit Enhancements payable under this Appendix D shall be paid in the same form elected by the Participant pursuant to Article 9 for benefits payable under Section 5.01, 5.02, or 5.03 of the Plan.

D.7 Retirements between July 1, 2009 and October 31, 2009

Notwithstanding any provisions in this Appendix D to the contrary, a Participant who retires from Service between July 1, 2009 and October 31, 2009 and who would otherwise satisfy the conditions described in Section D.2(b), (c) and (d), will be entitled to the SRP Benefit Enhancements described in Section D.4. Any SRP Benefit Enhancements shall commence at the later of November 1, 2009 or the Benefit Commencement Date elected by the Participant, and shall



be paid in the same form elected by the Participant pursuant to Article 9 for benefits payable under Section 5.01, 5.02 or 5.03 of the Plan.

D.8 Other Plan Provisions

This Appendix D shall only apply to Eligible Participants as described in Section D.2 and D.7.

Except as otherwise specified in this Appendix D, all other provisions contained in the Plan shall continue to apply to Eligible Participants.

D.9 Pre-65 Retiree Medical, Dental and Vision Benefits

In addition to the SRP Benefit Enhancements as described in Section D.4, an Eligible Participant who elects to participate in the Special Retirement Program pursuant to this Appendix D will be eligible to continue coverage under the Navajo Nation's Medical, Dental and Vision Benefit Plans, as specified in the Employee Benefits Plan. Such coverage shall cease when the Eligible Participant attains age 65. A Participant who retires pursuant to Section D.7 will also be eligible for this coverage. The Navajo Nation shall contribute 70% of the cost for such coverage, and an Eligible Participant who elects coverage under the SRP shall contribute 30% of the cost.

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

BENEFIT SERVICE CREDIT PURCHASE

E.1 Eligibility

Effective January 1, 2011, Active Participants who have at least four years of Vesting Service and retiring Participants will be eligible to purchase "Benefit Service Credit" for periods of intervening service in the U.S. Armed Forces. Benefit Service Credit will be added to Benefit Service in determining benefits in accordance with the terms of the plan applicable to the Participant. Benefit Service Credit shall be awarded upon payment by the Participant to the Fund as required under E.2.

Effective February 1, 2016, Active Participants who have at least four years of Vesting Service and retiring Participants will be eligible to purchase "Benefit Service Credit" for periods of service with another Indian Tribal, Federal, State, or local government or governmental agency if that service was not otherwise credited under that government's retirement plan. Benefit Service Credit will be added to Benefit Service in determining benefits in accordance with the terms of the plan applicable to the Participant. Benefit Service Credit shall be awarded upon payment by the Participant to the Fund as required under E.2.

## E.2 Payment for Purchase of Benefit Service Credit

A Participant may purchase Benefit Service Credit in one month increments for up to five years of military service. The cost to purchase Benefit Service Credit shall be based on the actuarial present value as follows:

- Active Participant's cost will be equal to the number of years or fraction of years being purchased, multiplied by the Participant's current pensionable pay, and multiplied by the applicable annual normal cost rate based on the Participant's age last birthday as prescribed in Appendix E-1. For a Participant who is working part-time, the cost will be based upon their current annualized full-time pay.
- A retiring Participant's cost will be based on the present value of the increase in his retirement benefit based on factors as prescribed in Appendix E-2.

## E.3 Application and payment process

An eligible Participant who wished to purchase Benefit Service Credit must apply to the Retirement Plan Administration Committee in writing, stating the desired period of service to be purchased and supplying proof of eligible military service. Upon receipt of a valid application, the Committee will notify the Participant of the cost for purchasing such service and an explanation of methods for payment within sixty days. The methods for payment include a roll-over from another qualified plan, such as an IRA or 401(k), or a personal check. Further, the Participant will be notified that payments made by personal check are not tax deductible.

E.4 Other

Participants who purchase Benefit Service Credit will receive a plan benefit no less than a full refund, without interest, of their payment to purchase such credit.

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

BENEFIT SERVICE CREDIT PURCHASE

Active Participant Cost Factor To Be Applied To  
Current Annual Pensionable Pay

| Age | Regular Employees | Commissioned Law<br>Enforcement Officers |
|-----|-------------------|--|
| 20  | 1.15%             | 2.29%                                    |
| 21  | 1.26%             | 2.52%                                    |
| 22  | 1.39%             | 2.77%                                    |
| 23  | 1.53%             | 3.05%                                    |
| 24  | 1.66%             | 3.32%                                    |
| 25  | 1.90%             | 3.79%                                    |
| 26  | 2.14%             | 4.27%                                    |
| 27  | 2.22%             | 4.77%                                    |
| 28  | 2.41%             | 4.92%                                    |
| 29  | 2.57%             | 5.29%                                    |
| 30  | 2.75%             | 5.54%                                    |
| 31  | 3.03%             | 5.91%                                    |
| 32  | 3.23%             | 6.25%                                    |
| 33  | 3.44%             | 6.69%                                    |
| 34  | 3.62%             | 6.87%                                    |
| 35  | 3.90%             | 7.26%                                    |
| 36  | 4.10%             | 7.75%                                    |
| 37  | 4.28%             | 8.00%                                    |
| 38  | 4.49%             | 8.63%                                    |
| 39  | 4.75%             | 9.06%                                    |
| 40  | 5.06%             | 9.43%                                    |
| 41  | 5.39%             | 9.73%                                    |
| 42  | 5.64%             | 10.29%                                   |
| 43  | 5.95%             | 10.91%                                   |
| 44  | 6.29%             | 11.42%                                   |
| 45  | 6.62%             | 11.75%                                   |
| 46  | 7.02%             | 12.27%                                   |
| 47  | 7.29%             | 12.33%                                   |
| 48  | 7.83%             | 12.68%                                   |
| 49  | 8.28%             | 13.88%                                   |
| 50  | 8.79%             | 14.19%                                   |
| 51  | 9.33%             | 14.28%                                   |
| 52  | 9.88%             | 15.21%                                   |
| 53  | 10.20%            | 15.83%                                   |
| 54  | 10.76%            | 16.40%                                   |
| 55  | 10.54%            | 16.48%                                   |
| 56  | 10.82%            |  |
| 57  | 11.02%            |  |
| 58  | 11.42%            |  |
| 59  | 11.78%            |  |
| 60  | 11.83%            |  |

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

BENEFIT SERVICE CREDIT PURCHASE

Retiring Participant Cost Factor To Be Applied To  
The Annual Increase in Life Annuity Benefit

| Age | Regular Employees | Commissioned Law<br>Enforcement Officers |
|-----|-------------------|--|
| 45  |                   | 11.5567                                  |
| 46  |                   | 11.4639                                  |
| 47  |                   | 11.3669                                  |
| 48  |                   | 11.2657                                  |
| 49  |                   | 11.1600                                  |
| 50  |                   | 11.0499                                  |
| 51  |                   | 10.9351                                  |
| 52  |                   | 10.8154                                  |
| 53  |                   | 10.6903                                  |
| 54  |                   | 10.5594                                  |
| 55  | 10.4225           | 10.4225                                  |
| 56  | 10.2787           | 10.2787                                  |
| 57  | 10.1278           | 10.1278                                  |
| 58  | 9.9691            | 9.9691                                   |
| 59  | 9.8025            | 9.8025                                   |
| 60  | 9.6279            | 9.6279                                   |
| 61  | 9.4455            | 9.4455                                   |
| 62  | 9.2556            | 9.2556                                   |
| 63  | 9.0587            | 9.0587                                   |
| 64  | 8.8554            | 8.8554                                   |
| 65  | 8.6468            | 8.6468                                   |
| 66  | 8.4339            | 8.4339                                   |
| 67  | 8.2178            | 8.2178                                   |
| 68  | 7.9993            | 7.9993                                   |
| 69  | 7.7791            | 7.7791                                   |
| 70  | 7.5570            | 7.5570                                   |



RETIREMENT PLAN FOR EMPLOYEES OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

ENHANCED RETIREMENT PROGRAM ("ERP") OF 2021

F.1 Purpose

The purpose of the Enhanced Retirement Program ("ERP") is to offer an enhanced retirement benefit package to those Navajo Nation employees retiring due to the Coronavirus ("COVID-19"), to reward eligible employees for their service and contribution to the Navajo Nation, and provide incentive for ERP Eligible Participants to retire on a voluntary basis. This ERP is voluntary, and ERP Eligible Participants who elect to retire during the ERP Window Period shall receive ERP Benefit Enhancement under the Plan.

F.2 ERP Eligible Participant

A Participant other than an Ineligible Participant who meets the following conditions:

- (a) Is a regular status employee of the Navajo Nation as described in Section 1.22, is at least sixty (60) years of age with at least ten (10) years of Vesting Service and is a regular status employee as of March 31, 2021; or
- (b) Is described in F.7.

F.3 Ineligible Participants

Notwithstanding having met the criteria set forth in Section F.2 of this Appendix F, the following categories of Navajo Nation employees as of March 31, 2021 are ineligible for participation in the ERP:

(a) Commissioned Law Enforcement Officers;

(b) Judges;

(c) Council Delegates;

(d) Political Appointees;

(e) Temporary employees; or

(f) Participants with benefits accruing from service with an Affiliate (that is, those with no service as a regular status employee of the Navajo Nation).

#### F.4 ERP Window Period

An ERP Eligible Participant will be entitled to the ERP Benefit Enhancement described in Section F.5 of this Appendix F, provided the Participant makes an election in the manner prescribed by the Plan Administrator between June 11, 2021 and July 28, 2021, to participate in this ERP with a retirement from Service date on or before September 30, 2021. An ERP Eligible Participant may revoke his/her election to participate in this ERP within seven (7) calendar days after the original election is made.

#### F.5 ERP Benefits Enhancement

An ERP Eligible Participant who elects to participate during the ERP Window Period and retires from Service on or before September 30, 2021 shall be entitled to one the following Benefits Enhancement

options:

- (a) For purposes of calculating the ERP Eligible Participant's Normal Retirement Benefit, in accordance with Section 5.01 of the Plan, and based on the ERP Eligible Participant's Final Average Earnings and the ERP Eligible Participant's number of years of Benefit Service at his Retirement Date, the ERP Eligible Participant's number of years of Benefit Service shall be increased by three (3);
  
  - (b) For purposes of calculating the ERP Eligible Participant's Postponed Retirement Benefit, in accordance with Section 5.02 of the Plan, and based on the ERP Eligible Participant's Final Average Earnings and the ERP Eligible Participant's number of years of Benefit Service at his Postponed Retirement Date, the ERP Eligible Participant's number of years of Benefit Service shall be increased by three (3);
  
  - (c) For purposes of calculating the ERP Eligible Participant's Early Retirement Benefit, in accordance with Section 5.03 of the Plan, and based on the ERP Eligible Participant's Final Average Earnings and the ERP Eligible Participant's number of years of Benefit Service at his Early Retirement Date, the ERP Eligible Participant's number of years of Benefit Service shall be increased by three (3).
- 
- 1) At the election of the ERP Eligible Participant, he may receive his Early Retirement Benefit as an annuity, commencing at his Early Retirement Date or at any date thereafter, in a reduced amount calculated by reducing the Early Retirement Benefit by five twelfths of one percent (5/12 %) for each month by which the ERP Benefit Commencement Date precedes his Normal Retirement Date.



F.6 Commencement of ERP Benefit Enhancement

Any ERP Benefit Enhancement payable under this Appendix F shall commence at the same Benefit Commencement Date elected by the Participant for benefits payable pursuant to Sections 5.01, 5.02, or 5.03 of the Plan.

F.7 Retirements Prior to ERP Window Period

Notwithstanding any provisions in this Appendix F to the contrary, an ERP Eligible Participant who terminated employment with the Navajo Nation after the commencement of COVID-19 related office closures (see Navajo Nation Executive Order 001-20), commenced benefit payments on or after April 1, 2020, and who would otherwise satisfy the conditions described in Section F.2 (a) as of March 31, 2021, if employment had continued until that date, shall be entitled to the ERP Benefit Enhancement beginning October 1, 2021.

F.8 Form of Payment

Any ERP Benefit Enhancement payable under this Appendix F shall be paid in the same form elected by the Eligible Participant pursuant to Article 9, for benefits payable under Sections 5.01, 5.02, or 5.03 of the Plan.

F.9 Other Plan Provisions

This Appendix F shall apply only to ERP Eligible Participants as described in Section F.2. Except as otherwise specified in this Appendix F, all other provisions contained in the Plan shall continue to apply to ERP Eligible Participants.



**RETIREMENT PLAN FOR EMPLOYEES OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES**

Amended and Restated

Effective April 1, 2019

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## INTRODUCTION

The Retirement Plan for Employees of the Navajo Nation and Participating Affiliates (the "Plan") as stated herein is an amendment and restatement of the Retirement Plan for Employees of the Navajo Tribe and Certain of its Affiliates as in effect on July 1, 1973. The Plan was amended and restated effective July 1, 1976. The Plan was amended effective October 1, 1984 and October 1, 1989 to improve the benefits provided under this Plan. Moreover, effective January 1, 2002, the Plan was amended to make specific benefit changes and to clarify administrative practices. Effective October 1, 2002, provisions covering Judges of the Navajo Nation were added to the Plan.

The Plan is hereby amended and restated effective April 1, 2019 to clarify certain benefit provisions, to make certain administrative changes. The amendment to increase the Normal Retirement Age under the Plan for participants other than Commissioned Law Enforcement Officers shall be effective January 1, 2020. The provisions of this Plan are intended to be qualified under Sections 401(a) and 501(a) of the Internal Revenue Code, as applicable for governmental plans.

The provisions of this Plan supersede prior Plan provisions for all persons in the employment of the Employer or any Affiliates at any time on or after the Restatement Effective Date and of all persons claiming through, under or against such persons. The provisions of the Plan as in effect immediately prior to the Restatement Effective Date shall govern Participants who ceased to be employed, by retirement or otherwise, prior to the Restatement Effective Date and of all persons claiming through, under or against such Participants.

## ARTICLE 1

### Definitions

- 1.01 "Accrued Benefit" shall mean the amount of annual pension benefit, payable as a straight life annuity, commencing at Normal Retirement Age, as shall be considered accrued at any time for a Participant in accordance with the provisions of Article 5. In the case where a Participant has been employed by more than one Participating Affiliate and unless otherwise noted in Appendix A, a separate Accrued Benefit is determined which is attributable to each Participating Affiliate. Each such Accrued Benefit is determined in accordance with Article 5 ignoring the Earnings and Benefit Service while employed by other Participating Affiliates.
- 1.02 "Active Participant" means a Participant still actively employed as an Eligible Employee.
- 1.03 "Actuarial Equivalent" shall mean a benefit or amount having the same Actuarial Equivalent Value as an Accrued Benefit or other applicable benefit. Prior to July 1, 2016, the Ten and Fifteen Year Certain and Life Annuities described in Sections 9.04(c) and (d) shall be 92% and 88%, respectively, of the Straight Life Annuity Option determined under Section 9.04(b).
- 1.04 "Actuarial Equivalent Value" for all benefits commencing on and after July 1, 2016, shall mean the single sum present value of an Accrued Benefit or other applicable benefit, where values are calculated using a 6% interest rate and the 1983 Group Annuity Mortality Table (83GAM), using 50% of the male, 50% of the female mortality rates as published in Revenue Ruling 95-6. Prior to July 1, 2016, "Actuarial Equivalent Value" shall mean the single sum present value of an Accrued Benefit or other applicable benefit, where values are calculated using a 6% interest rate and the 1971 TPF&C Mortality Table, with three years setback for both Participants and Joint Annuitants; notwithstanding, for any form of payment subject to Code Section 417(e), values are calculated using the annual 30-Year Treasury Bond rate of October (published in November) prior to the calendar year of payment and 83GAM, using 50% of the male, 50% of the female blend (or such other table as the Secretary may prescribe).
- 1.05 "Actuary" shall mean that individual who is an "enrolled actuary" as defined in Section 7701(a)(35) of the Code or that firm of actuaries which has on its staff such an actuary, appointed by the Committee.

- 1.06 "Adjustment Factor" shall mean the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code for years beginning after December 31, 1993, applied to such items and in such manner as the Secretary shall prescribe.
- 1.07 "Affiliate" shall mean any Chapters which are certified under Title 26 of the Local Governance Act.
- 1.08 "Beneficiary" shall mean that person who shall be entitled to receive benefits payable pursuant to the provisions of this Plan by virtue of a Participant's death, pursuant to the provisions of Article 9.
- 1.09 "Benefit Service" shall mean the period of Service, expressed as number of years and completed months, of a Participant which is used to calculate the amount of the Participant's Accrued Benefit, determined in accordance with Article 2.
- 1.10 "Benefit Commencement Date" shall mean the first day of the first month for which a benefit is payable to an individual, even though the first payment may not actually have been made at that date.
- 1.11 "Break in Service" shall mean a Termination followed by the completion of a one-year Period of Severance.
- 1.12 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.
- 1.13 "Commissioned Law Enforcement Officers" shall mean Active Participants who are charged with the responsibility of the enforcement of Navajo Nation laws and have been commissioned by the

Chief of Police of the Navajo Nation Division of Public Safety and for the purposes of this document shall include Active Participants employed by the Navajo Nation in their regular status as:

- (a) firefighters,
- (b) forest rangers,
- (c) historic preservation rangers, or
- (d) environmental protection agency personnel.

1.14 "Committee" shall mean the Retirement Plan Administration Committee, which is responsible for the operations and administration of the Plan in accordance with the provisions of Article 11.

1.15 "Compensation" shall mean the wages as defined in Code Section 3401(a) for purposes of income tax withholding, but without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed. For Plan Years beginning on or after January 1, 1998, Compensation shall also include contributions made by the Employer or any Affiliate pursuant to the salary reduction elections of an Employee that are not includible in the gross income of the Employee under Code Sections 125 and 402(e)(3) (i.e., cafeteria plan and 401(k) contributions).

1.16 "Deferred Vested Benefit" shall mean the benefit to which a vested Participant would be entitled after a Break in Service, as calculated in accordance with Article 5.

1.17 "Defined Benefit Dollar Limitation" shall mean the limitation set forth in Section 415(b)(1) of the Code.

1.18 "Early Retirement Benefit" shall mean the benefit to which a Participant would be entitled in the event of his retirement prior to his Normal Retirement Date, as calculated in accordance with Article 5.

1.19 "Early Retirement Date" shall mean the first day of the calendar month coincident with or next following the Participant's Termination Date, if such date is earlier than the Participant's Normal Retirement Date, provided that the Participant has completed four years of Vesting Service by his Termination Date, and provided that the Participant has attained the age specified below by his Termination Date.

|                                       | <u>Age</u> |
|---------------------------------------|------------|
| Commissioned Law Enforcement Officers | 45         |
| Other Participants                    | 55         |

1.20 "Earnings" shall mean, for any period, base salary or base wages received from the Employer for that period. Earnings shall exclude overtime, bonuses, etc. Earnings shall include contributions made by an Employer pursuant to salary reduction elections of an Employee that are not includible in gross income of the Employee under Code Sections 125 or 402(a)(8) (i.e., cafeteria plan or 401(k) contributions). For Benefit Commencement Dates after October 1, 2000, hourly pay rates used to determine any Accrued Benefit shall not be less than \$2.01.

1.21 "Effective Date" shall mean July 1, 1973.

1.22 "Eligible Employee" shall mean, pursuant to the provisions of Article 3, a regular status Employee as determined by the Employer's personnel policies and procedures, a Navajo Nation Council Delegate, the President and Vice President of the Navajo Nation, Judges of the Navajo Nation, and



a Leased Employee of the Employer who is specifically covered under this Plan pursuant to the leasing arrangement.

1.23 “Employee” shall include any person who is a regular status employee, a common-law employee, a Leased Employee of the Employer, and the President or Vice President of the Navajo Nation. A common-law employee as used in this document refers to Judges of the Navajo Nation and Navajo Nation Council Delegates in accordance with Navajo Nation Council Resolution CAP-23-00.

1.24 “Employer” shall mean the Navajo Nation and any other Participating Affiliate, which, with the approval of the Committee, shall adopt this Plan for its Eligible Employees. “Employer” when used in this Plan shall refer to the Navajo Nation and Participating Affiliates either individually or collectively, as the context may require. Appendix A contains a list of the Participating Affiliates, which shall be updated as needed when the Budget and Finance Committee approves an amendment to the Plan pursuant to Section 13.01.

1.25 “Employment Commencement Date” shall mean:

(a) For purposes of determining Service as a Judge, the date on which the Employee is first confirmed as a Judge by the Navajo Nation Council.

(b) For all other Employees, the date on which the Employee is first credited with an Hour of Service.

1.26 “Final Average Earnings” shall mean the product of 12 times the average of the Participant’s highest monthly Earnings for 36 months out of the last 120 months of Benefit Service. If the

Participant has less than 36 months of Benefit Service, the total number of months of Benefit Service will be used in the preceding calculation.

In calculating Final Average Earnings for a Participant whose Benefit Service was separated by periods of Non-benefit Service or Period of Severance, such Participant's Benefit Service shall be considered to be consecutive.

In the event a Participant did not receive any Earnings during a period when he was credited with Benefit Service, such period shall be disregarded and the remaining Benefit Service shall be aggregated to calculate his Final Average Earnings.

In calculating Final Average Earnings, as used for calculation of benefits under this Plan, the amount of Earnings taken into account in any 12-month period shall not exceed \$150,000 times the Adjustment Factor applicable for that 12-month period. Effective for Plan Years beginning on or after January 1, 2002, the amount of Earnings taken into account in any 12-month period shall not exceed \$200,000 times the Adjustment Factor applicable for that 12-month period.

In the case where a Participant has been employed by more than one Participating Affiliate, including Chapters as described in Appendix A, and unless otherwise noted in Appendix A, Final Average Earnings is determined for each Participating Affiliate with which the Participant has been employed based upon Earnings and Benefit Service while employed by Participating Affiliate. For purposes of determining such Final Average Earnings, Benefit Service and Earnings with other Participating Affiliates are ignored.

- 1.27 "Fund" shall mean any fund provided for in a Trust arrangement or an insurance contract or a combination of both, which is held by a Funding Agent, to which contributions under the Plan will be made on and after the Effective Date, and out of which benefits are paid to the Participants or otherwise provided for.
- 1.28 "Funding Agent" shall mean a Trustee or insurance company or any duly appointed successor or successors selected to hold a Fund.
- 1.29 "Hour of Service" shall mean an Hour of Service calculated in accordance with the provisions of Article 2.
- 1.30 "Joint Annuitant" shall mean the Beneficiary who will receive retirement benefits after the death of the Participant based on the provisions of a Joint and Survivor Annuity, as described in Article 9. The Joint Annuitant cannot be changed after the Benefit Commencement Date.
- 1.31 "Joint and Survivor Annuity" shall mean a retirement benefit under which equal monthly installments are payable during the joint lifetimes of the retired Participant and the Joint Annuitant, and under which, upon the earlier death of the retired Participant, 100%, or 75% or 50% as elected by the Participant prior to his Benefit Commencement Date, continues to be paid to the Joint Annuitant for the Joint Annuitant's lifetime. No further benefits are payable when both the Participant and the Joint Annuitant have deceased.
- 1.32 "Judge" shall mean any person who is: (1) Chief Justice of the Navajo Nation, (2) an associate justice of the Navajo Nation Supreme Court, or (3) a trial Judge of the Navajo Nation district courts and family courts.

1.33 "Judge's Final Pay" shall apply only to Judges appointed before January 29, 2003. Refer to the Historical Plan Provisions in Appendix B for provisions applicable to Judges appointed prior to January 29, 2003.

1.34 "Leased Employee" means any person who renders personal services to an Employer and who is described in Section 414(n)(2) of the Code by reason of providing such services, other than a person described in Section 414(n)(5) of the Code.

1.35 "Non-benefit Service" shall mean the period(s) of Service rendered by an Employee in an employment category not eligible for participation in the Plan as set forth in Section 2.04.

1.36 "Normal Retirement Age" means:

|  | <u>Age</u> |
|--|------------|
| Commissioned Law Enforcement Officers  | 55         |
| Other Participants, the youngest of:   |            |
| • If less than 10 Years of Vesting Service on January 1, 2020                  | 62         |
| • If at least 10, but less than 25 Years of Vesting Service on January 1, 2020 | 61         |
| • If at least 25 Years of Vesting Service on January 1, 2020                   | 60         |
| • If at least age 55 and a Participant on January 1, 2020                      | 60         |
| • If retired prior to January 1, 2020  | 60         |

1.37 "Normal Retirement Benefit" shall mean the benefit to which a Participant would be entitled in the event of his retirement on his Normal Retirement Date, as calculated in accordance with Article 5.

- 1.38 "Normal Retirement Date" means the first day of the calendar month coincident with or next following the attainment of Normal Retirement Age.
- 1.39 "Participant" shall mean any Eligible Employee who becomes a Participant in the Plan pursuant to Article 3 and shall include any individual who has separated from Service or ceased to be an Eligible Employee and for whom there is still a liability under the Plan.
- 1.40 "Participating Affiliate" shall mean any Affiliate, including eligible Local Governance Act-certified chapters of the Navajo Nation, that has elected, with the approval of the Committee, to participate in the Plan as to some or all of its Eligible Employees by adopting this Plan and the Funding Agreement. Such Employees shall be considered Eligible Employees under the Plan and, for the purposes of their benefits under the Plan, the Participating Affiliate shall be included in the definition of Employer in Section 1.24. Adoption shall become effective upon the completion of all of the following steps: (1) passage of a Chapter resolution approving the adoption of the Plan and requesting approval of the Committee for the Chapter to join the Plan as a Participating Affiliate; (2) passage of a resolution of the Committee approving the Chapter as a Participating Affiliate; and (3) execution of a Funding Agreement between the Chapter and the Navajo Nation, which shall be signed by the Navajo Nation President and the authorized Chapter official and/or Chapter Manager. Appendix A contains a list of the Participating Affiliates.
- 1.41 "Period of Severance" shall mean the period between a Participant's date of Termination and the date he subsequently first performs an Hour of Service for an Employer.
- 1.42 "Plan" shall mean the Plan designated as the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates, as embodied herein, and any amendments thereto, and shall also refer

to any Predecessor Plan for which this document is a restatement, and any Predecessor Plan which has been merged into this Plan.

1.43 "Plan Sponsor" shall mean the Navajo Nation and Participating Affiliates.

1.44 "Plan Year" shall mean the following 12-month periods:

|                                       | <u>Plan Year</u> |
|---------------------------------------|------------------|
| October 1, 1996 and thereafter        | 10/1 - 9/30      |
| April 1, 1990 to March 31, 1996       | 4/1 - 3/31       |
| October 1, 1978 to September 30, 1989 | 10/1 - 9/30      |
| July 1, 1973 to June 30, 1977         | 7/1 - 6/30       |

The months spanning between the changes in the Plan Year shall constitute a short Plan Year.

1.45 "Postponed Retirement Benefit" shall mean the benefit to which a Participant would be entitled upon his retirement after his Normal Retirement Date, as calculated in accordance with Article 5.

1.46 "Postponed Retirement Date" shall mean the first day of the calendar month coincident with or next following the Participant's Termination Date, if such date is later than the Participant's Normal Retirement Date.

1.47 "Predecessor Plan" shall mean any plan for which this Plan is a restatement, any Plan which has been merged into this Plan or any Predecessor Plan, or any other Plan sponsored by an entity which adopted this Plan or a Predecessor to this Plan for any of its Employees who had been Participants in such other Plan.

- 1.48 "Qualified Joint and Survivor Annuity" shall mean, for a married Participant, a Joint and Survivor Annuity with the Participant's Spouse as Joint Annuitant and a survivor benefit equal to 50% of the Participant's benefit. For a single Participant it shall mean a benefit payable in the form of an annuity for the life of the Participant. The Qualified Joint and Survivor Annuity for a married Participant shall be at least the Actuarial Equivalent of the Participant's Accrued Benefit.
- 1.49 "Restatement Effective Date" shall mean April 1, 2019.
- 1.50 "Retirement Date" shall mean a Participant's Normal, Early or Postponed Retirement Date.
- 1.51 "Service" shall mean an Employee's period of employment with an Employer or an Affiliate that is counted as "Service" in accordance with Article 2. For the purpose of determining Service, Employee Commencement Date, date of re-employment, date of Termination, and Retirement Date shall be adjusted as follows:
- (a) dates prior to the 15<sup>th</sup> of the month shall be converted to the first of the month, and
  - (b) dates on and after the 15<sup>th</sup> of the month shall be converted to the first of the following month.
- 1.52 "Spouse" shall mean the wife of a male Participant and the husband of a female Participant as determined under Navajo Nation Law.
- 1.53 "Termination" shall mean the cessation of active employment with the Employer.



- 1.54 "Termination Date" shall mean the first date on which an Employee ceases active employment with the Employer.
- 1.55 "Trust" shall mean any monetary trust established under an agreement between the Employer and a Trustee under which any portion of the Fund is held, and shall include any and all amendments to the Trust agreement.
- 1.56 "Trustee" shall mean any Trustee holding any portion of the Fund under a Trust agreement forming a part of the Plan.
- 1.57 "Vesting Service" shall mean Service for determining a Participant's right to vest in his Accrued Benefit under Article 7, as counted under the rules of Article 2.

## ARTICLE 2

### Service Counting Rules

2.01 Hours of Service - An Employee shall be credited with an Hour of Service for:

- (a) each hour for which a person is directly or indirectly paid, or entitled to payment, by an Employer for the performance of duties;
- (b) each hour for which a person is directly or indirectly paid, or entitled to payment, by an Employer for reasons other than for the performance of duties (such as vacation, holiday, illness, incapacity including disability, jury duty, military duty, leave of absence or layoff);
- (c) each hour for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by an Employer;
- (d) each hour for which an Employee is not paid or entitled to payment but during which he or she normally would have performed duties for an Employer during any period for which he or she is eligible to receive benefits under the short-term disability plan of an Employer; and
- (e) each hour for which an Employee is not paid or entitled to pay but during which the Employee is absent for a period of military service or paternity/maternity leave (sick leave/family and medical leave) for which re-employment rights are protected by law, but only if the Employee returns to employment within the time required by law.

2.02 Vesting Service - An Employee shall be credited with a Year of Vesting Service for each Year of Service credited in accordance with the following rules:

(a) Each person will be credited with Service under the Plan for the period or periods during which such person maintains an employment relationship with an Employer. A person's employment relationship will be deemed to commence on his Employment Commencement Date and will be deemed to continue during the following periods:

(1) Periods of leave of absence with or without pay granted to the person by an Employer in a like and nondiscriminatory manner for any purpose including, but not limited to, sickness, accident or military leave. Such person will not be considered to have terminated employment during such leave of absence unless he or she fails to return to the employ of the Employer at or prior to the expiration date of such leave, in which case he or she will be deemed to have terminated as of the date of commencement of such leave.

(2) In the case of a person who terminates employment and who is subsequently re-employed by the Employer without having incurred a Break in Service, the period between his date of Termination and date of re-employment.

(b) An Employee who has incurred a Break in Service will receive credit for Service prior to such Break in Service in the Plan if:

(1) he or she had at least four years of Vesting Service at the time of his termination of employment, or

- (2) the number of his consecutive one-year Breaks in Service is less than the greater of five consecutive one-year Breaks in Service or the aggregate number of years of Service before his Termination of employment, or
- (3) he or she is or becomes an Eligible Employee on or after October 1, 2000.
- (c) Except as otherwise provided under paragraph (b) above, all periods of a person's Vesting Service, whether or not consecutive, will be aggregated. Vesting Service will be measured in elapsed years and fractions of years whereby each 12 complete calendar months constitutes one year, each completed calendar month constitutes 1/12 of a year.
- (d) An Employee's Service with an Affiliate will be counted as Service with the Employer in accordance with the above rules.
- (e) Service of a Delegate of the Navajo Nation Council and the President and Vice President of the Navajo Nation shall be counted beginning January 12, 1999. All Service as a Participant prior to holding office shall be counted.

2.03 Benefit Service - A Participant shall be credited with Benefit Service for each period of Service performed while an Eligible Employee during which the Participant accrues Vesting Service pursuant to Section 2.02, and, in the case of Normal, Early or Postponed Retirement, for the equivalent periods of unused sick leave as of the Participant's Retirement Date, subject to the following exceptions:

- (a) Benefit Service shall not be credited during a Period of Severance or furlough (the placement into temporary non-duty and non-pay status due to closure of a Head Start school facility for the summer) even though it is less than 12 months.
- (b) Benefit Service shall not be credited for employment with Department of Head Start prior to October 1, 1981.
- (c) Benefit Service shall not be credited during periods of Non-benefit Service as set forth in Section 2.04.
- (d) Benefit Service for Members of the Navajo Nation Council and the President and Vice President of the Navajo Nation shall not be credited for periods prior to January 12, 1999.

In the case where a Participant has been employed by more than one Participating Affiliate and unless otherwise noted in Appendix A, Benefit Service shall be determined for each Participating Affiliate for purposes of Article 5.

2.04 Non-benefit Service - Non-benefit Service shall consist of the number of years and completed months of Service rendered by an Employee in an employment category not eligible for participation in the Plan as set forth below:

- (a) The President and Vice President of the Navajo Nation, and members of the Navajo Nation Council who are eligible to participate in the Deferred Retirement Plan for Members of the Navajo Nation Council for Service prior to January 12, 1999.

(b) Employees serving at the pleasure of the President of the Navajo Nation, the Speaker of the Navajo Nation Council, or the Navajo Nation Council, who are eligible to participate in the Deferred Compensation Plan for Certain Employees of the Navajo Nation and who:

(1) were not serving at the pleasure of the President of the Navajo Nation, the Speaker of the Navajo Nation Council, or the Navajo Nation Council on February 14, 1989; and

(2) do not have an Hour of Service after February 14, 1989.

(c) Temporary employment as defined by personnel policies and procedures.

(d) Elected Chapter Officials (President, Vice President, Secretary, and Land Board members).

2.05 Qualified Military Service - Notwithstanding any provision of this Plan to the contrary, with respect to Employees who are rehired by the Employer or any Affiliate on or after December 12, 1994, contributions, benefits and Service credit with respect to Qualified Military Service will be provided in accordance with Section 414(u) of the Code.

### ARTICLE 3

#### Eligibility for Participation and Transfers

3.01 Eligibility to Become a Participant - All Participants who were participating in this Plan on the Restatement Effective Date shall continue to participate. Any other Eligible Employee shall become a Participant on the date he or she becomes a regular status Employee as determined by the Employer's personnel policies and procedures, subject to the conditions and/or exceptions set forth below:

- (a) An Eligible Employee shall not participate in the Plan prior to the Effective Date the Participating Affiliate adopts the Plan for its Employees.
- (b) An Employee who is in an employment category as set forth below shall not be eligible to participate in the Plan:
  - (1) The President and Vice President of the Navajo Nation, and members of the Navajo Nation Council who are eligible to participate in the Deferred Retirement Plan for Members of the Navajo Nation Council who have not served at least an Hour of Service after January 12, 1999.
  - (2) Employees serving at the pleasure of the President of the Navajo Nation, the Speaker of the Navajo Nation Council, or the Navajo Nation Council, who are eligible to participate in the Deferred Compensation Plan for Certain Employees of



the Navajo Nation who have not served for at least one Hour of Service after February 14, 1989.

- (3) Elected Chapter Officials (President, Vice President, and Secretary).
- (4) Employees who are categorized as employees of the Employer for Federal employment tax purposes only, such as members of the Employer's boards, commissions, and committees, (unless otherwise employed by the Employer as a regular status employee or other eligible employment category).
- (5) Employees whose services are not substantially all in the performance of essential governmental functions, and employees whose services are in the performance of commercial activities (whether or not an essential government function).

3.02 Re-employment - A Participant who incurs a Break in Service and is later re-employed as an Eligible Employee will recommence Participation when he or she again satisfies the conditions of Section 3.01.

3.03 Termination of Participation - A Participant who incurs a Break in Service at a time when he or she is not entitled to a retirement benefit or to a Deferred Vested Benefit shall cease Participation at the close of the first Plan Year in which he or she incurs a Break in Service. A Participant who incurs a Break in Service and who is entitled to a retirement benefit or a Deferred Vested Benefit shall cease Participation upon receipt of payments equal to his total benefit provided hereunder.

3.04 Transfers - A Participant who transfers from the Navajo Nation to a Participating Affiliate, or vice versa, or among the Participating Affiliates, shall accrue benefits under the Plan in accordance with the provisions specified by the Navajo Nation or the Participating Affiliate that employs the Participant at the time the Benefit Service is credited.

3.05 Commissioned Law Enforcement Officers - A Participant who serves as a Commissioned Law Enforcement Officer during a portion or all of his Service shall accrue benefits under the Plan in accordance with the provisions specified for Commissioned Law Enforcement Officers only for the period he or she actually serves as a Commissioned Law Enforcement Officer.

## ARTICLE 4

### Retirement Eligibility and

### Suspension of Benefits

- 4.01 Retirement - A Participant who has reached his Retirement Date shall be entitled to retire and receive benefits in accordance with Article 5.
- 4.02 Suspension of Benefits - Postponed Retirement - If a Participant's Service continues after his Normal Retirement Age and such Service after his Normal Retirement Age constitutes Section 203(a)(3)(B) Service (as defined in Section 4.04), such Participant's benefits will be suspended.
- 4.03 Suspension of Benefits - Re-employment – A person receiving benefits hereunder shall provide written notice to the Plan Administrator within 10 days of becoming re-employed by the Employer.

If a person receiving benefits hereunder is re-employed by the Employer and recommences participation in the Plan, payment of those benefits will be suspended as long as the re-employed Employee remains employed with the Employer and provided such Service constitutes Section 203(a)(3)(B) Service (as defined in Section 4.04). Benefits are to be suspended for each and every month in which the employee performed 40 or more Hours of Service (as described in Section 4.04). However, if re-employed in the Temporary employment category, as defined by personnel policies and procedures, then benefits will not be subject to suspension until 90 days after their first re-employment date after retirement.

If a Participant receives payments that should have been suspended then the overpayment will be corrected in accordance with Internal Revenue Service guidance on correcting such an error. The correction may include the Participant repaying the plan or a reduction in future benefits.

The Plan Administrator shall provide written notice to Plan Participants of the above provisions, which Participants shall sign to acknowledge.

4.04 Section 203(a)(3)(B) Service - In accordance with U.S. Department of Labor Regulations Section 2530.203-3, "Section 203(a)(3)(B) Service" shall be determined on a monthly basis and an Employee shall be deemed to be in Section 203(a)(3)(B) Service in any month in which he or she shall perform 40 or more Hours of Service. If an Employee performs less than 40 Hours of Service in any month, then the Employee shall not be deemed to be in Section 203(a)(3)(B) Service during such months. An Employee shall have the right to contest the determination of his status in accordance with the procedures set forth in Section 11.08 of this Plan.

4.05 Recommencement of Benefits - Benefits which are suspended in accordance with Section 4.02 or 4.03 of this Article shall be paid in any month in which the Employee is not considered to be in Section 203(a)(3)(B) Service. If an Employee whose benefits are suspended under this article thereafter again becomes entitled to benefits hereunder by virtue of a new Early, Normal or Postponed Retirement, the Participant shall be entitled to a new Early, Normal or Postponed Retirement Benefit, as of the Participant's new Early, Normal or Postponed Retirement Date. The

new Early, Normal or Postponed Retirement Benefits shall recommence in the same form of payment that was previously elected for the benefits that had been suspended. The amount of new Early Normal or Postponed Retirement Benefit shall be determined as follows:

A = the single life annuity plan benefit amount determined as of the new and most recent Early, Normal or Postponed Retirement Date, without offset for benefits paid during suspension

B = the single life annuity at the new and most recent Early, Normal or Postponed Retirement Date derived from the present value of benefits paid prior to suspension

C = the plan benefit amount the participant was receiving prior to suspension (in the same form of payment that was previously elected)

D = the single life annuity plan benefit amount payable prior to suspension (same as C if a single life annuity was elected)

**New benefit = prior benefit + any additional amount, corrected for any overpayments,**

**where:**

Prior benefit = C, payable in the same form of payment that was previously elected.

Additional amount =  $A - B - D$ , but not less than 0, expressed as a single life annuity and subject to the optional forms provisions of Article 9.

**The new benefit amount will then be reduced by any correction for overpayments, including amounts that should have been suspended in accordance with Section 4.03. This correction may result in the new benefit being less than the prior benefit in pay.**

## ARTICLE 5

### Amount of Retirement Benefit

5.01 Normal Retirement Benefit - A Participant's Normal Retirement Benefit shall be an annual annuity for the life of the Participant, payable monthly, commencing upon the Participant's Normal Retirement Date, in an amount equal to (a) plus (b), as applicable:

(a) The greater of (i) and (ii):

- (i) 2.0% times the Participant's Final Average Earnings multiplied by the number of years of Benefit Service, excluding any Benefit Service earned by the Participant as a Judge, at Normal Retirement Date.
- (ii) 2.0% times the Participant's Final Average Earnings as of December 31, 2019 multiplied by the number of years of Benefit Service as of December 31, 2019, excluding any Benefit Service earned by the Participant as a Judge, at age 60.

(b) For Judges appointed on or after January 29, 2003, the greater of (i) and (ii):

- (i) 2.5% times the Participant's Final Average Earnings multiplied by the number of years of Benefit Service earned by the Participant as a Judge, up to a maximum of 30 years of Benefit Service, at Normal Retirement Date.
- (ii) 2.5% times the Participant's Final Average Earnings as of December 31, 2019 multiplied by the number of years of Benefit Service earned by the

Participant as a Judge as of December 31, 2019, up to a maximum of 30 years of Benefit Service, at age 60.

Refer to the Historical Plan Provisions in Appendix B for provisions applicable to Judges appointed prior to January 29, 2003.

5.02 Postponed Retirement Benefit - If a Participant continues in Service after his Normal Retirement Date, he or she shall be entitled to a Postponed Retirement Benefit of an annual annuity for life, payable monthly, commencing at his Postponed Retirement Date, in an amount equal to the benefit determined in accordance with Section 5.01 and based on the Participant's Final Average Earnings and the number of years of Benefit Service of the Participant at his Postponed Retirement Date.

5.03 Early Retirement Benefit - A Participant who retires from Service prior to his Normal Retirement Date but on or after attaining the early retirement age as set forth below, shall be entitled to an Early Retirement Benefit, provided the Participant has completed four years of Vesting Service at that time.

|                                       | <u>Early Retirement Age</u> |
|---------------------------------------|-----------------------------|
| Commissioned Law Enforcement Officers | 45                          |
| Other Participants                    | 55                          |

A Participant's Early Retirement Benefit shall be an annual annuity for life, payable monthly, commencing at the Participant's Normal Retirement Date, in an amount equal to the benefit determined in accordance with Section 5.01 and based on the Participant's Final Average Earnings



and the number of years of Benefit Service of the Participant at his Early Retirement Date. At the election of the Participant, the Participant may receive his Early Retirement Benefit as an annuity commencing at his Early Retirement Date, or at any date thereafter, in a reduced amount calculated as the greater of (i) and (ii):

- (i) The Early Retirement Benefit determined under 5.01(a)(i) plus 5.01(b)(i) reduced by 5/12% for each month by which Benefit Commencement Date precedes Normal Retirement Date.
- (ii) The Early Retirement Benefit determined under 5.01(a)(ii) plus 5.01(b)(ii) reduced by 5/12% for each month by which Benefit Commencement Date precedes age 60.

5.04 (a) Deferred Vested Benefit - A Participant who has incurred a Break in Service after he or she has completed four years of Vesting Service shall be entitled to an annual pension benefit, payable as a straight life annuity commencing at Normal Retirement Date equal to the Participant's Accrued Benefit on his Termination Date as calculated in accordance with Section 5.01.

(b) Deferred Vested Benefit - Early Commencement - A Participant entitled to a Deferred Vested Benefit who subsequently satisfies the age requirements for entitlement to an Early Retirement Benefit shall be entitled to elect to receive his Deferred Vested Benefit at a date prior to his Normal Retirement Date, in a reduced amount calculated in accordance with Section 5.03.

5.05 Disability Retirement Benefit for Commissioned Law Enforcement Officers - A Commissioned Law Enforcement Officer who is disabled (while he or she is a Commissioned Law Enforcement Officer) after completing four years of Vesting Service, prior to retirement pursuant to the terms of this Plan,

may elect to retire on the first day of the month after it is determined that he or she is disabled and after Termination of employment, and to receive a monthly benefit payable as described in Section 5.05(a) or Section 5.05(b). A Commissioned Law Enforcement Officer shall be considered disabled if the Social Security Administration determines the Officer is disabled and is eligible to receive OASDI disability benefits. The Social Security disability date must be on or before Termination of employment.

- (a) Service-connected Disability Retirement Benefit - If the proximate cause of the disability occurs while the Commissioned Law Enforcement Officer is on duty, the Disability Retirement Benefit shall be an annual annuity, payable monthly, commencing on the first of the month following the date as of which the disability occurs, as established by the Committee. The benefit shall equal 60% of the Participant's Final Average Earnings, reduced by any and all disability payments received by the Participant under the Social Security Administration and Workers' Compensation and any other benefit program maintained by the Navajo Nation.
  
- (b) Non-Service-connected Disability Retirement Benefit - If the proximate cause of the disability occurs while the Commissioned Law Enforcement Officer is not on duty, the Disability Retirement Benefit shall be an annual annuity, payable monthly, commencing on the first of the month after it is determined that he or she is disabled in an amount equal to the following percentage of the Participant's Final Average Earnings based on the Participant's Benefit Service at the time of disability:

| <u>Years of Benefit Service as a<br/>Commissioned Law Enforcement Officer</u> | <u>Final Average<br/>Earnings Percentage</u> |
|---|--|
| Not more than 6   | 15%  |
| More than 6, but not more than 13   | 30%  |
| More than 13  | 40%  |

Such amount shall be reduced by any and all disability payments received by the Participant under the Social Security Administration and any other benefit program maintained by the Navajo Nation.

- 5.06 Disability Retirement Benefits for Judges - A Judge who is determined to be permanently disabled (while he or she is a Judge) after completing four years of Vesting Service, prior to retirement pursuant to the terms of this Plan, may elect to retire on the first day of the month after it is determined that he or she is permanently disabled and after Termination of employment, and to receive a monthly benefit equal to the Actuarial Equivalent of his Normal Retirement Benefit.

A Judge seeking retirement under Section 5.06 shall provide statements from three different licensed medical doctors attesting to the Judge's diagnosis and prognosis for recovery.

A Judge shall be considered permanently disabled if, based on recommendation by the Chief Justice of the Navajo Nation and the Navajo Nation Judiciary Committee, the Committee determines that the Judge is permanently disabled. For purposes of Section 5.06, "permanently disabled" shall mean the permanent inability of the Judge, by reason of physical or mental incapacity, to perform any substantial part of his ordinary duties as a Judge.

The Committee may, on a biannual basis and in a nondiscriminatory manner formally established by the Committee and Navajo Nation Judiciary Committee, require a Judge retired under Section 5.06 to reaffirm his disability. Failure to comply with the reaffirmation process will result in the suspension of retirement benefits until such time as the reaffirmation is satisfied.

- 5.07 Disability Retirement Benefit for Other Participants - A Participant that is not a Commissioned Law Enforcement Officer or Judge who is disabled (while he or she is employed by the Nation) after completing four years of Vesting Service, prior to retirement pursuant to the terms of this Plan, may elect to retire on the first day of the month after it is determined that he or she is disabled and after Termination of employment, and to receive a monthly benefit equal to the Actuarial Equivalent of his Normal Retirement Benefit. A Participant shall be considered disabled if the Social Security Administration determines the Participant is disabled and is eligible to receive OASDI disability benefits. The Social Security disability date must be on or before Termination of employment.

## ARTICLE 6

### Required Benefit Limitations

6.01 Maximum Annual Defined Benefit Plan Benefits - Notwithstanding any other provision of the Plan, the annual benefit to which a Participant is entitled under the Plan shall not, in any Limitation Year, be in an amount which would exceed the applicable limitations under Section 415 of the Code and regulations thereof. If the benefit payable under the Plan would (but for this Section) exceed the limitations of Section 415 of the Code by reason of a benefit payable under another defined benefit plan aggregated with this Plan under Code Section 415(f), the benefit under this Plan shall be reduced only after all reductions have been made under such other plan. As of January 1 of each calendar year commencing on or after January 1, 2008, the dollar limitation as determined by the Commissioner of Internal Revenue for that calendar year shall become effective as the maximum permissible dollar amount of benefit payable under the Plan during the Limitation Year. The term 'compensation' for purposes of applying the applicable limitations under Section 415 of the Code with respect to any Participant shall mean Limitation Compensation.

Limitation Compensation means any Compensation actually paid or made available to a Participant by the Employer during a Limitation Year, including income from sources outside the United States otherwise excluded from gross income under Code Section 911, but excluding deferred Compensation, stock options and other distributions which receive special tax benefit. Effective as of January 1, 2008, Limitation Compensation shall include amounts required to be recognized under the provisions of U.S. Treasury Department regulation 1.415(c)-2(e) and amounts permitted

to be recognized under the provisions of U.S. Treasury Department regulation 1.415(c)-2(e)(2) and (3) and shall not include any amounts not permitted to be recognized under the provisions of U.S. Treasury Department regulation 1.415(c)-2(e). Additionally, effective as of January 1, 2008, Limitation Compensation shall not exceed the limitation on compensation under Section 401(a)(17) of the Code.

Limitation Year shall mean the calendar year.

## ARTICLE 7

### Vesting

- 7.01 General Rule - A Participant who incurs a Break in Service at a time when he or she is not entitled to an Early, Normal or Postponed Retirement Benefit under the provisions of Article 5 shall not be entitled to benefits under this Plan except as provided under the provisions of this Article.
- 7.02 Vesting at Normal Retirement Age - A Participant who has attained Normal Retirement Age shall be fully vested in his Accrued Benefit.
- 7.03 Vested Portion - A Participant who incurs a Termination at a time when he or she is not entitled to an Early, Normal or Postponed Retirement Benefit under the provisions of Article 5 shall be entitled to a Deferred Vested Benefit, payable as provided under Article 5, which shall be a portion of his Accrued Benefit calculated in accordance with the following table:

If the Participant's  
Years of Vesting Service are:

Less than 4  
4 or more

The Vested  
Portion is:

0%  
100%

- 7.04 Vesting upon Plan Termination - In the event of termination or partial termination of this Plan, each affected Participant shall be 100% vested in his Accrued Benefit, but only to the extent funded. The foregoing sentence shall not apply to a former Participant who has been paid under Section 9.04(e) or who has incurred five consecutive One-year Breaks in Service after his Termination



Date. Such a former Participant shall not be entitled to any additional vested benefit upon termination or partial termination.

## ARTICLE 8

### Qualified Pre-retirement Survivor Annuity

#### 8.01 Automatic Pre-retirement Spousal Death Benefit

(a) Except as provided in subparagraph (b) below, in the event a Participant with a vested right to his Accrued Benefit under the Plan dies before his Benefit Commencement Date, a death benefit shall be provided to the Participant's Spouse as follows:

(1) If the Participant at the date of death was eligible to retire and receive a benefit under the Plan at an Early, Normal or Postponed Retirement Date, then his surviving Spouse shall automatically receive a death benefit in an amount equal to one-half of the amount of retirement benefit which would have been payable to the Participant had he or she retired on the day preceding his death, receiving a benefit in the form of a Joint and Survivor Annuity with a 50% survivor annuity to the Spouse.

(2) If the Participant at the date of death was not eligible to retire under the Plan, then the Participant's surviving Spouse shall receive an automatic spousal death benefit in an amount equal to the amount that would have been payable to the Spouse under the normal form of payment under Section 9.01, assuming:

(i) the Participant had separated from Service on the earlier of his Termination Date or date of his death,

- (ii) the Participant had survived to the earliest date he or she could have retired and received a benefit under the Plan pursuant to Article 5,
- (iii) the Participant retired on such date with a benefit in the form of a Joint and Survivor Annuity with a 50% survivor annuity to the Spouse but calculated using only actual Benefit Service as of the Participant's date of death, and
- (iv) the Participant died on the day after his Benefit Commencement Date. The automatic pre-retirement spousal death benefit under this Section 8.01(a)(2) shall commence to be paid to the Spouse, unless the Spouse elects otherwise, as of the first day of the month coinciding with or next following the earliest date the Participant could have retired and received a benefit under the Plan pursuant to Article 4, had he or she not died, and shall be paid up to the first day of the month in which such Spouse dies. The Spouse may not delay commencement of the pre-retirement spousal death benefit beyond the Participant's Normal Retirement Date.

- (3). In lieu of periodic payments under Section 8.01(a)(1) or 8.01(a)(2), the Spouse will be paid a lump sum if the Actuarial Equivalent Value of periodic payments does not exceed \$5,000 as of the first day of the month coinciding with or next following the date of death. In determining the Actuarial Equivalent Value, the sum total of all Plan benefits should be considered.

- (b) The automatic pre-retirement spousal death benefit payable under this Article 8 shall be payable after the death of the Participant only if the Spouse had been married to the Participant throughout the full one-year period ending on the date of the Participant's death.

## ARTICLE 9

### Forms of Benefit

- 9.01 Qualified Joint and Survivor Annuity - At the earliest time a Participant could become entitled to commence receiving payments of an Early, Normal or Postponed Retirement Benefit or of a Deferred Vested Benefit, benefits shall commence in the form of a Qualified 50% Joint and Survivor Annuity (which, for a Participant who has no Spouse includes a single life annuity), unless the Participant, with the consent of his Spouse, if any, elects otherwise. Any consent of the Participant's Spouse shall be made within 90 days of the date the Qualified 50% Joint and Survivor Annuity would otherwise commence, and shall be executed in accordance with the rules of Section 9.03.
- 9.02 Right to Elect - In lieu of the benefits provided by Section 9.01, the Participant shall have the right to elect, prior to his Benefit Commencement Date, an alternative form of benefit provided under the terms of this Article 9. If the Participant is married, any such election, except for a Qualified Joint and Survivor Annuity, may be made only with the consent of his Spouse, executed as provided under Section 9.03. Any alternative form of benefit shall be the Actuarial Equivalent of the Participant's Accrued Benefit.
- 9.03 Election of Forms - A Participant may make or revoke an election of any form of benefit to which the Participant is entitled under this Article 9 in writing to the Committee or its delegatee, and such election or revocation shall be subject to the following conditions:

- (a) The Committee shall furnish to each Participant a general written explanation in non-technical terms of the availability of the various optional forms of payment under the Plan at least 30 days but no more than 90 days prior to the Participant's Benefit Commencement Date. For Plan Years beginning after December 31, 1996, the 30-day period described in the preceding sentence shall be modified as follows: (i) The written explanation may be provided to the Participant after his Benefit Commencement Date as long as the Participant is permitted to change his benefit election during the 30-day period following the date the explanation is provided; and (ii) the Participant may waive the 30-day period as long as distribution of his benefit commences more than seven days after the explanation is provided.
- (b) An election to receive an optional form of benefit may be made at any time during the election period. The election period begins 90 days prior to the Participant's Benefit Commencement Date and ends on the later of the Participant's Benefit Commencement Date or the last day of the 30-day period (or shorter period if the 30-day period is waived by the Participant) described in subsection (a) above. Subject to subsection (c) below, the Participant may change his benefit election, including waiver of the Qualified Joint and Survivor Annuity and revocation of any previous election, and make a new election at any time until the expiration of the election period.
- (c) If a Participant is married, an election of a form of benefit other than the Qualified Joint and Survivor Annuity will require the written consent of the Spouse, and such written consent must be witnessed by a notary public or a representative of the Plan.

9.04 Optional Forms of Retirement Benefit - The optional forms that a Participant may elect are anyone of the following:

- (a) Joint and Survivor Annuity Option - An Actuarial Equivalent monthly benefit payable to the Participant for life, and after his death in 100%, or 75% or 50% of such amount as specified by the Participant, to the Joint Annuitant for life. Should the Joint Annuitant die prior to the Participant's Benefit Commencement Date, any election of this option shall be automatically canceled. If the Participant should die prior to the Benefit Commencement Date, no payments shall be made under this option to the Joint Annuitant, but if the Joint Annuitant is the Spouse of the Participant, such Spouse will be entitled to the death benefit provided under Article 8.
- (b) Straight Life Annuity Option - A Participant who has a Spouse may elect to have the Participant's retirement benefit payable in equal unreduced monthly payments during the Participant's lifetime, with no further payments to any other person after the Participant's death. If this option is elected, the retirement benefit payable to the Participant shall be the amount of retirement benefit determined under the applicable Section(s) of Article 5.
- (c) Ten Year Certain and Life Annuity - An Actuarial Equivalent monthly benefit payable to the Participant for life, and that in the event the Participant dies within 10 years of the Benefit Commencement Date, the Beneficiary the Participant designated shall receive a survivor benefit which is equal to the amount the Participant was receiving at the time of his death payable monthly until the date 10 years from the Participant's Benefit Commencement Date. If the Participant designated more than one Beneficiary, the monthly payment shall

be divided equally among the Beneficiaries. If the Participant does not die within 10 years of the Benefit Commencement Date, there shall be no survivor benefit. If one or more of the Beneficiaries the Participant designated dies before the termination of the survivor benefit described in this Section Article 9.04(c), the monthly payment shall be divided equally among the surviving Beneficiaries.

- (d) Fifteen Year Certain and Life Annuity – An Actuarial Equivalent monthly benefit payable to the Participant for life and if the Participant dies within 15 years of the Benefit Commencement Date, the Beneficiary the Participant designated shall receive a survivor benefit which is equal to the amount the Participant was receiving at the time of his death payable monthly until the date 15 years from the Participant's Benefit Commencement Date. If the Participant designated more than one Beneficiary, the monthly payment shall be divided equally among the Beneficiaries. If the Participant does not die within 15 years of the Benefit Commencement Date, there shall be no survivor benefit. If one or more of the Beneficiaries the Participant designated dies before the termination of the survivor benefit described in this Section 9.04(c), the monthly payment shall be divided equally among the surviving Beneficiaries.

- (e) In lieu of periodic payments under Article 5, a Participant who has attained Retirement Age (Normal or Early) or is disabled under Section 5.05 or 5.06 will be paid a lump sum if the Actuarial Equivalent Value of periodic payments does not exceed \$5,000. In determining the Actuarial Equivalent Value, the sum total of all plan benefits should be considered. A Participant whose distribution is subject to the provisions of this Section 9.04(e) may elect to have such distribution paid directly to an eligible retirement plan specified by the



Participant in a direct rollover or to receive the distribution directly. If the Participant fails to make such election, the Committee will pay the distribution in a direct rollover to an individual retirement plan designated by the Committee.

9.05 Eligible Rollover Distributions

- (a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 9.05, a distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions

- (1) Eligible rollover distribution - An eligible rollover distribution is 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; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

Effective for distributions made on or after January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such a portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (2) Eligible retirement plan - An eligible retirement plan 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 annuity plan described in Section 403(a) of the Code or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity only.

Effective for distributions made on or after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts

transferred into such plan from this Plan. 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.

- (3) Distributee - 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 or former Spouse 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 or former Spouse.
- (4) Direct rollover - A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

## ARTICLE 10

### Funding

- 10.01 Funding Agreement - The Employer has entered into a funding arrangement with one or more Funding Agents providing for the administration of the Fund or Funds in which the assets of this Plan are held. The Employer may at any time or from time to time appoint one or more investment managers, each of which shall direct the Funding Agent in the investment or reinvestment of all or part of the Fund. The Employer shall make contributions to the Plan on an annual basis sufficient to pay normal pension costs plus interest on unfunded past service liabilities.
- 10.02 Non-diversion of the Fund - To the extent required by law, the principal or income of any Fund shall be used solely for the exclusive benefit of Participants or Beneficiaries, or to meet the necessary expenses of the Plan, except that upon termination of the Plan, after all the liabilities under the Plan have been satisfied, any property remaining in a Fund after satisfaction of all liabilities under this Plan shall be considered the result of erroneous actuarial computation and shall be distributed by the Funding Agent to the Employer.

## ARTICLE 11

### Plan Administration

11.01 Appointment of Committee - The Retirement Plan Administration Committee, hereinafter referred to as Committee, shall consist of:

- (a) The Chairperson, Budget and Finance Committee
- (b) The Vice Chairperson, Budget and Finance Committee
- (c) The Controller, Division of Finance
- (d) The Director, Department of Personnel Management
- (e) The Director, Division of Community Development
- (f) Chief Justice, Judicial Branch

Person (a) shall serve as Chairperson of the Committee; person (b) shall serve as Vice Chairperson of the Committee.

11.02 Powers and Duties

- (a) The Committee shall have full power to administer the Plan and to construe and apply all of its provisions on behalf of the Employer in adherence to Navajo Nation laws. The Committee's powers and duties, unless properly delegated, shall include, but shall not be limited to:

- (1) Designating agents to carry out responsibilities relating to the Plan, other than fiduciary responsibilities.
- (2) Deciding questions relating to eligibility, continuity of employment, and amounts of benefits.
- (3) Deciding disputes that may arise with regard to the rights of Employees, Participants and their legal representatives, or Beneficiaries under the terms of the Plan. Decisions by the Committee will be deemed final in each case.
- (4) Obtaining information from the Employer with respect to its Employees as necessary to determine the rights and benefits of Participants under the Plan. The Committee may rely conclusively on such information furnished by the Employer.
- (5) Compiling and maintaining all records necessary for the Plan.
- (6) Authorizing the Funding Agent to make payment of all benefits as they become payable under the Plan.
- (7) Engaging such legal, administrative, consulting, actuarial, investment, accounting and other professional services as the Committee deems proper.

- (8) Adopting rules and regulations for the administration of the Plan that are not inconsistent with the Plan. The Committee may, in a nondiscriminatory manner, waive the timing requirements of any notice or other requirements described in the Plan. Any such waiver will not obligate the Committee to waive any subsequent timing or other requirements for other Participants.
  - (9) Interpreting and approving Domestic Relations Orders.
  - (10) Making non-substantive amendments for the purposes of maintaining the qualified status of the Plan only.
  - (11) Performing other actions provided for in other parts of this Plan.
- (b) The Employer shall have responsibility for, and shall be the Named Fiduciary for, the following purposes:
- (1) Selection of the funding media for the Plan, including the power to direct investments and to appoint an investment manager.
  - (2) Allocating fiduciary responsibilities, other than trustee responsibilities, among fiduciaries, and designation of additional fiduciaries.
  - (3) Selection of insurance contracts to provide benefits hereunder, or, if all assets are not held under insurance contracts, the Trustee.

(c) The Trustee, if any, shall have responsibility for, and shall be the Named Fiduciary for the care and custody of, and, to the extent investment managers are not appointed by the Employer, management of Plan assets held by such Trustee other than insurance contracts in adherence with Navajo Nation laws.

11.03 Actions by the Committee - A majority of the members composing the Committee at any time will constitute a quorum. The Committee may act at a meeting, or in writing without a meeting, by the vote or assent of a majority of its members. The Committee will have authority to designate in writing one of its members or any other person as the person authorized to execute papers and perform other ministerial duties on behalf of the Committee.

11.04 Interested Committee Members - No member of the Committee will participate in an action of the Committee on a matter which applies solely to that member. Such matters will be determined by a majority of the remainder of the Committee.

11.05 Indemnification - The Employer, by the adoption of this Plan, indemnifies and holds the members of the Committee, jointly and severally, harmless from the effects and consequences of their acts, omissions and conduct in their official capacities, except to the extent that the effects and consequences result from their own willful misconduct, breach of good faith, or gross negligence in the performance of their duties. The foregoing right of indemnification will not be exclusive of other rights to which each such member may be entitled by any contract or other instrument or as a matter of law.



11.06 Conclusiveness of Action - Any action on matters within the discretion of the Committee will be conclusive, final and binding upon all Participants in the Plan and upon all persons claiming any rights, including Beneficiaries.

11.07 Payment of Expenses - The members of the Committee will serve without compensation for their services. The compensation or fees of consultants, actuaries, accountants, counsel and other specialists and any other costs of administering the Plan or Fund, will be paid by the Fund unless, at the discretion of the Committee, paid by the Employer.

11.08 Claims Procedures

- (a) Filing a Claim. All claims shall be filed in writing by the Participant, his Beneficiary or the authorized representative of the claimant, by completing the procedures that the Committee requires. The procedures shall be reasonable and may include the completion of forms and the submission of documents and additional information. All claims under this Plan shall be filed in writing with the Plan Administrator according to the Committee's procedures. Claims arising on and after January 1, 2002 shall be filed in writing with the Plan Administrator according to the Committee's procedures no later than one year after the occurrence of the event that gives rise to the claim. If the claim is not filed within the time described in the preceding sentence, the claim shall be barred.

(b) Review of Initial Claim

- (1) Initial Period for Review of the Claim. The Plan Administrator shall review all materials and shall decide whether to approve or deny the claim. If a claim is denied in whole or in part, written notice of denial shall be furnished by the Plan Administrator to the claimant within a reasonable time after the claim is filed but not later than 90 days after the Plan Administrator receives the claim. The notice shall set forth the specific reason(s) for the denial, reference to the specific Plan provisions on which the denial is based, a description of any additional material or information necessary for the claimant to perfect his claim and an explanation of why such material or information is necessary, and a description of the Plan's review procedures, including the applicable time limits and, for claims filed on and after January 1, 2002, a statement of the claimant's right to pursue the claim as a civil action in the Courts of the Navajo Nation following a denial of the appeal under subsection (c) below.
- (2) Extension. If the Plan Administrator determines that special circumstances require an extension of time for processing the claim, it shall give written notice to the claimant and the extension shall not exceed 90 days. The notice shall be given before the expiration of the 90-day period described in subparagraph (b)(1) above and shall indicate the special circumstances requiring the extension and the date by which the Plan Administrator expects to render its decision.

(c) Appeal of Denial of Initial Claim. In the event a claim is denied, the claimant may appeal the denial by requesting a review of the denied claim. All such requests for review must be in writing and adhere to the Committee's procedures. The claimant may review pertinent documents, and may submit issues or comments in writing. The claimant must request a review within the reasonable period of time prescribed by the Committee. In no event shall such a period of time be less than 60 days.

(d) Review of Appeal

(1) Initial Period for Review of the Appeal. The Committee shall conduct all requested reviews of denied claims and shall render its decision within a reasonable time, but not less than 60 days of the receipt of the appeal by the Committee. The claimant shall be notified of the Committee's decision in a written notice, which shall set forth the specific reason(s) for the denial, reference to the specific Plan provisions on which the denial is based, a statement that the co-claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records and other information relevant to the claimant's claim, and, for claims filed on and after January 1, 2002, a statement of the claimant's right to pursue the claim as a civil action in the Courts of the Navajo Nation following a denial of the appeal under subsection (c) above.

(2) Extension. If the Committee determines that special circumstances require an extension of time for reviewing the appeal, it shall give written notice to the claimant and the extension shall not exceed 60 days. The notice shall be given

before the expiration of the 60-day period described in subparagraph (d)(1) above and shall indicate the special circumstances requiring the extension and the date by which the Committee expects to render its decision.

- (e) Form of Notice to Claimant. The notice to the claimant shall be given in writing and shall be written in a manner that can be understood by the claimant.
  
- (f) Discretionary Authority of Committee. The Committee shall have full discretionary authority to determine eligibility, status and the rights of all individuals under the Plan, to construe any and all terms of the Plan, and to find and construe all facts.

## ARTICLE 12

### Funding Policy and Contributions

- 12.01 Employer Contributions - The Nation and each Participating Affiliate intend to make contributions to fund this Plan at such times and in such amounts as determined by the Actuary in accordance with the pension expense policy as determined by the Employer. Any actuarial gains arising under the Plan shall be used to reduce future Employer contributions to the Plan and shall not be applied to increase retirement benefits with respect to remaining Participants.
- 12.02 Suspension of a Participating Affiliate - Participating Affiliate contributions are due after the close of each quarter. If a Participating Affiliate fails to make the required Employer Contribution payments by 60 days after the contribution deadline, then on the first day of the first calendar month after the 60-day period, the Plan Administrator shall suspend its status as a Participating Affiliate in the Plan. Contributions made by the Participating Affiliate will not be refunded from the Plan due to suspension. However, service under the plan shall be counted for periods when contributions were made timely. The Plan Administrator shall notify the Participating Affiliate in writing that it is suspended and shall inform the Participating Affiliate of the requirements for reinstatement of status as a Participating Affiliate.
- 12.03 Reinstatement of a Participating Affiliate - To be reinstated after a suspension, the Participating Affiliate must provide the Plan Administrator with: (1) a memo explaining the reasons for the Participating Affiliate's failure to make timely Employer Contribution payments, and what procedures are in place to guarantee timely payments in the future; (2) a resolution requesting

reinstatement as a Participating Affiliate; and (3) a complete payment of all past due Employer Contributions plus accrued interest in accordance with Section 12.05.

12.04 Revoking the Status of a Participating Affiliate - The Participating Affiliate shall only be eligible for reinstatement twice. The third time the Participating Affiliate fails to make the required Employer Contribution payments by 60 days after the contribution deadline, the Plan Administrator shall recommend that the Committee revoke the entity's status as a Participating Affiliate. The Committee shall have the authority to permanently revoke the status of a Participating Affiliate such that its employees are no longer eligible to participate in the Plan.

12.05 No Credit for Service When Employer Contributions Are Untimely - During periods when a Participating Affiliate's Employer Contributions are not made timely pursuant to the terms of the Funding Agreement, the Employees of such Employer shall not be credited for Service. However, Service can be restored if the Employer becomes current by paying the late payments in full plus interest accrued at a rate of one percent (1%) interest for each month late following the close of each quarter. The interest payment shall become due and owing upon the suspension of a Participating Affiliate, and accrued interest must be paid to reinstate the suspended Affiliate.

12.06 Participant Contributions - Participant contributions to the Fund are not required or permitted under the Plan, except for a benefit service credit purchase in accordance with Appendix E.

## ARTICLE 13

### Amendment, Termination and Merger of the Plan

- 13.01 Right to Amend the Plan - The Employer reserves the right to modify, alter or amend this Plan from time to time to any extent that it may deem advisable including, but without limiting the generality of the foregoing, any amendment deemed necessary to ensure the continued qualification of the Plan under Section 401 of the Code or the appropriate provisions of any subsequent revenue law. No such amendment shall increase the duties or responsibilities of a Funding Agent without its consent thereto in writing. No such amendment(s) shall allow any portion of the principal or income of the Fund to be used for any purposes other than for the exclusive benefit of Participants or Beneficiaries at any time prior to the satisfaction of all the liabilities under the Plan with respect to such persons. No amendment shall (a) reduce a Participant's Accrued Benefit on the effective date of the Plan amendment, (b) eliminate or reduce an early retirement benefit, retirement-type subsidy or an optional form of benefit under the Plan with respect to the Participant's Accrued Benefit on the date of the amendment, or (c) reduce a retired Participant's retirement benefit as of the effective date of the amendment. This Plan shall be amended only upon a resolution of the Committee recommending such amendment to the Budget and Finance Committee, and a resolution of the Budget and Finance Committee approving and adopting the amendment.
- 13.02 Right to Terminate the Plan - The Employer shall have the right to terminate this Plan at any time. In the event of such termination all affected Participants shall be vested as provided in Section 7.04.

## ARTICLE 14

### Miscellaneous

- 14.01 Limitation on Distributions - Notwithstanding any provision of this Plan regarding payment to Beneficiaries or Participants, or any other person, the Committee may withhold payment to any person if the Committee determines that such payment may expose the Plan to conflicting claims for payment. As a condition for any payments, the Committee may require such consent, representations, releases, waivers or other information as it deems appropriate. The Committee may, at its discretion, comply with the terms of any judgment or other judicial decree, order, settlement or agreement, including, but not limited to, a Domestic Relations Order.
- 14.02 Limitation on Reversion of Contributions - Except as provided in subsections (a) and (b) below, Employer contributions made under the Plan will be held for the exclusive benefit of Participants, Joint Annuitants or Beneficiaries and may not revert to the Employer.
- (a) A contribution made by the Employer under a mistake of fact may be returned to the Employer within one year after it is contributed to the Plan, to the extent that it exceeds the amount which would have been contributed, absent the mistake in fact.
- (b) A contribution conditioned on the Plan's initial qualification under Sections 401(a) and 501(a) of the Code may be returned to the Employer, if the Plan does not qualify, within one year after the date the Plan is denied qualification.



Earnings attributable to amounts which may be returned to the Employer pursuant to this Section may not be distributed; but, in the event that there are losses attributable to such amounts, the amount returned to the Employer shall be reduced by the amount of such losses.

14.03 Voluntary Plan - The Plan is purely voluntary on the part of the Employer and neither the establishment of the Plan nor any Plan amendment nor the creation of any Fund or account, nor the payment of any benefits will be construed as giving any Employee or any person legal or equitable right against the Employer, any Trustee or other Funding Agent, or the Committee unless specifically provided for in this Plan or conferred by affirmative action of the Committee or the Employer according to the terms and provisions of this Plan. Such actions will not be construed as giving any Employee or Participant the right to be retained in the Service of the Employer. All Employees and/or Participants will remain subject to discharge to the same extent as though this Plan had not been established.

14.04 Non-alienation of Benefits - Participants and Beneficiaries are entitled to all the benefits specifically set out under the terms of the Plan, but neither those benefits nor any of the property rights in the Plan are assignable or distributable to any creditor or other claimant of a Participant or Beneficiary. A Participant will not have the right to anticipate, assign, pledge, accelerate or in any way dispose of or encumber any of the monies or benefits or other property that may be payable or become payable to such Participant or his Beneficiary provided, however, the Committee shall recognize and comply with a valid Domestic Relations Order. Effective with judgments, orders, decrees and settlement agreements entered into on or after August 5, 1997, this Section 14.04 shall not apply with respect to any offset to a Participant's benefits expressly provided for in a judgment, order, decree or settlement agreement described in Section 401(a)(13)(C) of the Code.

Notwithstanding the above, the requirements of this subsection 14.04 shall not preclude the following:

- (a) the enforcement of a federal tax levy made pursuant to Section 331 of the Code; or
- (b) the collection by the United States on a judgment resulting from an unpaid tax assessment.

14.05 Release of Benefits - If a person entitled to receive any benefits under the Plan has been adjudged physically or mentally incompetent by a court of competent jurisdiction and has a duly appointed guardian or custodian, benefits will be released to the person or institution so duly appointed.

14.06 Missing Persons - If the Committee is unable, after reasonable and diligent effort, to locate a Participant, Joint Annuitant or Beneficiary where no contingent Beneficiary is provided under the Plan, who is entitled to a distribution under the Plan, the distribution due such person will be forfeited after five years. If, however, such a person later files a claim for such benefit, it will be reinstated without any interest earned thereon. In the event that a distribution is due to a Beneficiary where a contingent Beneficiary is provided under the Plan (including the situation on which the contingent Beneficiary is the Participant's estate), and the Committee is unable, after reasonable and diligent effort, to locate the Beneficiary, the benefit shall be payable to the contingent Beneficiary, and such non-locatable Beneficiary shall have no further claim or interest hereunder. Notification by certified or registered mail to the last known address of the Participant or Beneficiary will be deemed a reasonable and diligent effort to locate such person.

- 14.07 Limitation of Third Party Rights - Nothing expressed or implied in the Plan is intended or will be construed to confer upon or give to any person, firm or association other than the Employer, the Participants or Beneficiaries, any right, remedy or claim under or by reason of this Plan except pursuant to a Domestic Relations Order.
- 14.08 Invalid Provisions - In case any provision of this Plan is held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining parts of the Plan. The Plan will be construed and enforced as if the illegal and invalid provisions had never been included.
- 14.09 One Plan - This Plan may be executed in any number of counterparts, each of which will be deemed an original and the counterparts will constitute one and the same instrument and may be sufficiently evidenced by any one counterpart.
- 14.10 Use and Form of Words - Whenever any words are used herein in the masculine gender, they will be construed as though they were also used in the feminine gender in all cases where that gender would apply, and vice versa. Whenever any words are used herein in the singular form, they will be construed as though they were also used in the plural form in all cases where the plural form would apply, and vice versa.
- 14.11 Headings - Headings to Articles and Sections are inserted solely for convenience and reference, and in the case of any conflict, the text, rather than the headings, shall control.
- 14.12 Governing Law - The Plan will be construed according to the federal laws governing Employee benefit plans qualified under the Code and governed according to the laws of the Navajo Nation.



IN WITNESS WHEREOF, the Navajo Nation has adopted this Plan effective April 1, 2019.

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ATTEST:

BY: \_\_\_\_\_  
Name  
Chairperson  
Budget and Finance Committee  
Navajo Nation Council

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Name:  
Chairperson  
Retirement Plan Administration Committee

DATE: \_\_\_\_\_

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

|                                       |                       |                             |
|---------------------------------------|-----------------------|-----------------------------|
| Navajo Nation Central Government      | July 1, 1973          |                             |
| <u>Participating Affiliates</u>       | <u>Effective Date</u> | <u>Ceased Participation</u> |
| Navajo Agricultural Products Industry | July 1, 1977          | May 31, 2003                |
| Navajo Arts and Crafts Enterprises    | July 1, 1974          | September 30, 2007          |
| Navajo Forest Products Industries     | July 1, 1973          | April 30, 1995              |

Effective December 2, 1997, the Retirement Plan Administration Committee approved RCJY-41-97 which merged the Navajo Forest Products Industries Participants with the Navajo Nation Central Government Participants. For purposes of Sections 1.01, 1.27 and 2.03, and Article 5, the Navajo Forest Products Industries Participants are treated as though their Navajo Forest Products Industries employment was Navajo Nation Central Government employment effective December 2, 1997.

Effective May 31, 2003, accrual of benefits shall cease, and no further entry into the Plan shall be allowed after May 31, 2003 for Employees of the Navajo Agricultural Products Industry. For purposes of Section 2.02, a Participant who continues employment with Navajo Agricultural Products Industry, the Company, or any Participating Affiliate, after May 31, 2003 shall continue to earn Vesting Service under the Plan with respect to benefits accrued through May 31, 2003. Navajo Agricultural Products Industry shall continue to make contributions to the Plan in accordance with Article 12 of the Plan.

Effective September 30, 2007, accrual of benefits shall cease, and no further entry into the Plan shall be allowed after September 30, 2007 for Employees of the Navajo Arts and Crafts Enterprises. For purposes of Section 2.02, a Participant who continues employment with Navajo Arts and Crafts Enterprises, the Company, or any Participating Affiliate, after September 30, 2007 shall continue to earn Vesting Service under the Plan with respect to benefits accrued through September 30, 2007. Navajo Arts and Crafts Enterprises shall continue to make contributions to the Plan in accordance with Article 12 of the Plan.

Effective February 1, 2016, any Employee of an Affiliate that has ceased participation in the Plan and who has accrued a vested benefit that is frozen will be entitled to commence his benefit on the first of any month coincident with or next following attainment of his Normal Retirement Age.

In addition, pursuant to 1.07 and 1.40 of the Plan, certified Chapters that have adopted the Plan and the Funding Agreement shall benefit under the Plan as Participating Affiliates with the approval of the Committee and only for periods during which the following conditions are met:

- Plan adoption is in place and on file with the Retirement Office; and
- Chapter contributions are made timely pursuant to the terms of the Funding Agreement.

HISTORICAL PLAN PROVISIONS

- 1.04 Actuarial Equivalent Value. The 1976 Plan document does not specifically state the interest rate and mortality table used to determine the Actuarial Equivalent Value.
- 1.07 Affiliate. Prior to January 1, 2007, Affiliate included organizations associated with the Navajo Nation whose management board or executive officers were answerable to the Navajo Nation Council.
- 1.19 Early Retirement Date was:  
Commissioned Law Enforcement Officers - Age 45 with seven years of Service  
Other Participants - Age 55 with seven years of Service in the 1976 Plan statement.
- 1.27 Final Average Earnings. Prior to October 1, 1989, the averaging period was 60 months instead of 36 months.
- 1.33 "Judge's Final Pay" shall apply only to Judges appointed prior to January 29, 2003 and shall mean the product of 12 times the average of a Judge's monthly Earnings for the last 12 months of Benefit Service. In calculating the Judge's Final Pay for a Judge whose Benefit Service was separated by periods of Non-benefit Service or Period of Severance, such Judge's Benefit Service shall be considered to be consecutive.



- 1.35 Normal Retirement Age. Prior to October 1, 1989, the Normal Retirement Age for Other Participants was 65.
- 1.36 "Normal Retirement Age" means 55 for Judges whose Employment Commencement Date is prior to January 29, 2003.
- 1.41 Plan. Prior to October 1, 1989, the Plan was entitled Retirement Plan for Employees of the Navajo Tribe and Certain of its Affiliates.
- 2.03 Benefit Service. Prior to October 1, 1999, unused sick leave not credited as Benefit Service.
- 2.04 Non-benefit Service. Prior to October 1, 1999, there was no formal Benefit Service exclusion for Elected Chapter Officials.
- 3.01 Eligibility to Become a Participant. Prior to October 1, 1999, there was no eligibility exclusion for Elected Chapter Officials. In the 1976 Plan statement, there was a 12-month wait to participate for those hired after June 30, 1976.
- 5.01 Normal Retirement Benefit. The Service multiplier has changed twice under the Plan:

| <u>Effective Date</u> | <u>Service Prior to 10/1/84</u> | <u>Service After 10/1/84</u> |
|-----------------------|---------------------------------|------------------------------|
| 10/1/89               | 2%                              | 2%                           |
| 10/1/84               | 2%                              | 1.25%                        |
| Prior to 10/1/84      | 1.25%                           | 1.25%                        |

For Judges whose Employment Commencement Date is prior to January 29, 2003; the Judge's Benefit Percentage times the Judge's Final Pay. The Judge's Benefit Percentage shall be equal to (1) plus (2) where:

(1) is the lesser of 8 and the number of years of Benefit Service as a Judge, divided by 16 years; and

(2) is the number of years of Benefit Service as a Judge in excess of 8 years, divided by 14 years.

Judges whose Employment Commencement Date is prior to January 29, 2003 with less than eight years of Vesting Service are not eligible for retirement benefits.

5.02 Postponed Retirement Benefit. The 1976 Plan statement froze benefits at the Normal Retirement Age.

5.03 Prior to October 1, 1989, the early retirement reduction factors were:

| Months by which Early Retirement precedes Normal Retirement Date | Percentage reduction for each month prior to Normal Retirement Date for Employees whose Normal Retirement Age is: |   |
|--|---|---|
|  | <u>65</u>   | <u>55</u>                               |
| First 60 months  | Sixty-five one-hundredths of 1% (.65%)  | Fifty-five one-hundredths of 1% (.55%)  |
| Months in excess of 60   | Thirty-five one-hundredths of 1% (.35%)   | Thirty-five one-hundredths of 1% (.35%) |

5.04 Prior to October 1, 1984, a Participant did not vest until completing seven years of Vesting Service.

5.05 Prior to October 1, 1999, the eligibility for disability retirement was five years of Vesting Service.  
The benefit was the Accrued Benefit reduced actuarially for immediate payment.

7.02 The 1976 Plan statement vested Participants at age 65.

7.03 Prior to October 1, 1984, a Participant did not vest until completing seven years of vesting.

8.01(a)(2) Prior to October 1, 1984, there was no pre-retirement death benefit for a Participant who died  
prior to the Early, Normal or Postponed Retirement Date.

9.04(c) The 1976 Plan statement specified the limit for lump sum cashouts as \$1,750. Prior to  
October 1, 1999, the actuarial equivalence definition was 6% and 1971 TPF&C Forecast  
Mortality Table.

APPENDIX C The Plan was amended to provide automatic Cost-of-Living Adjustments (COLA) to  
Participants (and their Beneficiaries) who retired from active Service prior to October 1,  
1996, effective October 1, 2006. In addition, a one-time 2% COLA was effective  
October 1, 2014.

APPENDIX D      The Plan was amended to adopt a Special Retirement Program (SRP) 2009 to provide incentive for eligible employees to retire voluntarily during a window period with enhanced benefits.

APPENDIX E      The Plan was amended to adopt a Benefit Service Credit Purchase provision which provides eligible participants with the option to purchase "Benefit Service Credit" for periods of intervening service in the U.S. Armed Forces and for periods of service with another Indian Tribal, Federal, State, or local government or governmental agency if that service was not otherwise credited under that government's retirement plan.

APPENDIX F      The Plan was amended to adopt the Enhanced Retirement Program ("ERP") of 2021.

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

COST OF LIVING ADJUSTMENTS ("COLA")

C.1 COLA Eligible Retiree

COLA Eligible Retiree shall mean a retired Participant, or the Beneficiary of a retired Participant, who meets the following conditions:

- (a) retired directly from active Service with the Navajo Nation; and
- (b) retired on or before October 1, 1996; and
- (c) has not been re-employed by the Navajo Nation and subsequently retired after October 1, 1996.

C.2 Schedule of Cost of Living Adjustments

The determination of the COLA to be applied to the benefit of a COLA Eligible Retiree shall be determined with reference to the following Retirement schedule:

| <u>Retirement Date</u>                           | <u>COLA Increase</u> |
|--|----------------------|
| Retired on or prior to 10/1/86                   | 2.50%                |
| Retired after 10/1/86 but on or prior to 10/1/87 | 2.25%                |
| Retired after 10/1/87 but on or prior to 10/1/88 | 2.00%                |
| Retired after 10/1/88 but on or prior to 10/1/89 | 1.75%                |
| Retired after 10/1/89 but on or prior to 10/1/90 | 1.50%                |
| Retired after 10/1/90 but on or prior to 10/1/96 | 1.25%                |

For purposes of applying this schedule, Retirement Date shall mean the Eligible Retiree's most recent Retirement Date from the Navajo Nation.

C.3 COLA Increase Effective October 1, 2005

A one-time COLA increase shall be applied to the benefits in payment status for COLA Eligible Retirees as of October 1, 2005 in accordance with the following Retirement schedule:

| <u>Retirement Date</u>                           | <u>COLA Increase</u> |
|--|----------------------|
| Retired on or prior to 10/1/86                   | 7.50%                |
| Retired after 10/1/86 but on or prior to 10/1/87 | 6.75%                |
| Retired after 10/1/87 but on or prior to 10/1/88 | 6.00%                |
| Retired after 10/1/88 but on or prior to 10/1/89 | 5.25%                |
| Retired after 10/1/89 but on or prior to 10/1/90 | 4.50%                |
| Retired after 10/1/90 but on or prior to 10/1/96 | 3.75%                |

For purposes of applying this schedule, Retirement Date shall mean the Eligible Retiree's most recent Retirement Date from the Navajo Nation.

C.4 Annual COLA Increases After October 1, 2005

Effective October 1, 2006, and each October 1 thereafter, the benefit in payment status of each COLA Eligible Retiree may be increased in accordance with the schedule set forth in Section C.2 of this Appendix C upon approval of the Plan Administrator. Effective October 1, 2014, an additional, one-time 2% COLA will be provided to all COLA Eligible Retirees.

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

SPECIAL RETIREMENT PROGRAM (SRP) 2009

D.1 Purpose

The purpose of the Special Retirement Program is to provide incentive for Eligible Participants to retire on a voluntary basis. Eligible Participants who elect to retire during the Window Period shall receive SRP Benefit Enhancements under the Plan.

D.2 Eligible Participant

A Participant who meets all the following conditions shall be eligible to participate in the Special Retirement Program:

- (a) Is actively employed by the Navajo Nation Central Government on October 31, 2009;
- (b) Is not a Judge, a Commissioned Law Enforcement Officer, Council Delegate or political appointee of the Navajo Nation;
- (c) Has attained the age of 55 as of December 31, 2009; and
- (d) Has been credited with at least ten years of Benefit Service as of December 31 2009.

D.3 Window Period

An Eligible Participant will be entitled to the SRP Benefit Enhancements described in Section D.4 provided the Participant makes an election between November 1, 2009 and December 15, 2009 to

retire from Service on or before January 1, 2010. An Eligible Participant may revoke his/her election within seven (7) calendar days after the original election is made.

#### D.4 SRP Benefit Enhancements

An Eligible Participant who retires from Service during the Election Period shall be entitled to the following SRP Benefit Enhancements:

- (a) For purposes of calculating the Participant's Normal Retirement Benefit, in accordance with Section 5.01 and based on the Participant's Final Average Earnings and the number of years of Benefit Service of the Participant at his Retirement Date, the Participant's number of years of Benefit Service shall be increased by three (3).
- (b) For purposes of calculating the Participant's Postponed Retirement Benefit, if applicable, in accordance with Section 5.02 and based on the Participant's Final Average Earnings and the number of years of Benefit Service of the Participant at his Postponed Retirement Date, the Participant's number of years of Benefit Service shall be increased by three (3).
- (c) For purposes of calculating the Participant's Early Retirement Benefit, if applicable, in accordance with Section 5.03 and based on the Participant's Final Average Earnings and the number of years of Benefit Service of the Participant at his Early Retirement Date, the Participant's number of years of Benefit Service shall be increased by three (3).

At the election of the Participant, the Participant may receive his Early Retirement Benefit as an annuity commencing at his Early Retirement Date, or at any date thereafter, in a



reduced amount calculated by reducing the Early Retirement Benefit by 5/12% for each month by which SRP Benefit Commencement Date precedes Normal Retirement Date. For purposes of calculating the reduction for Early Retirement Benefit under this Section D.4(c) only, the SRP Benefit Commencement Date shall be deemed to be 24 months later than the Benefit Commencement under Section 1.10, but not later than the Normal Retirement Date.

D.5 Commencement of SRP Benefit Enhancements

Any SRP Benefit Enhancements payable under this Appendix D shall commence at the same Benefit Commencement Date elected by the Participant for benefits payable pursuant to Section 5.01, 5.02, or 5.03 of the Plan.

D.6 Form of Payment

Any SRP Benefit Enhancements payable under this Appendix D shall be paid in the same form elected by the Participant pursuant to Article 9 for benefits payable under Section 5.01, 5.02, or 5.03 of the Plan.

D.7 Retirements between July 1, 2009 and October 31, 2009

Notwithstanding any provisions in this Appendix D to the contrary, a Participant who retires from Service between July 1, 2009 and October 31, 2009 and who would otherwise satisfy the conditions described in Section D.2(b), (c) and (d), will be entitled to the SRP Benefit Enhancements described in Section D.4. Any SRP Benefit Enhancements shall commence at the later of November 1, 2009 or the Benefit Commencement Date elected by the Participant, and shall

be paid in the same form elected by the Participant pursuant to Article 9 for benefits payable under Section 5.01, 5.02 or 5.03 of the Plan.

D.8 Other Plan Provisions

This Appendix D shall only apply to Eligible Participants as described in Section D.2 and D.7.

Except as otherwise specified in this Appendix D, all other provisions contained in the Plan shall continue to apply to Eligible Participants.

D.9 Pre-65 Retiree Medical, Dental and Vision Benefits

In addition to the SRP Benefit Enhancements as described in Section D.4, an Eligible Participant who elects to participate in the Special Retirement Program pursuant to this Appendix D will be eligible to continue coverage under the Navajo Nation's Medical, Dental and Vision Benefit Plans, as specified in the Employee Benefits Plan. Such coverage shall cease when the Eligible Participant attains age 65. A Participant who retires pursuant to Section D.7 will also be eligible for this coverage. The Navajo Nation shall contribute 70% of the cost for such coverage, and an Eligible Participant who elects coverage under the SRP shall contribute 30% of the cost.

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

BENEFIT SERVICE CREDIT PURCHASE

E.1 Eligibility

Effective January 1, 2011, Active Participants who have at least four years of Vesting Service and retiring Participants will be eligible to purchase "Benefit Service Credit" for periods of intervening service in the U.S. Armed Forces. Benefit Service Credit will be added to Benefit Service in determining benefits in accordance with the terms of the plan applicable to the Participant. Benefit Service Credit shall be awarded upon payment by the Participant to the Fund as required under E.2.

Effective February 1, 2016, Active Participants who have at least four years of Vesting Service and retiring Participants will be eligible to purchase "Benefit Service Credit" for periods of service with another Indian Tribal, Federal, State, or local government or governmental agency if that service was not otherwise credited under that government's retirement plan. Benefit Service Credit will be added to Benefit Service in determining benefits in accordance with the terms of the plan applicable to the Participant. Benefit Service Credit shall be awarded upon payment by the Participant to the Fund as required under E.2.

## E.2 Payment for Purchase of Benefit Service Credit

A Participant may purchase Benefit Service Credit in one month increments for up to five years of military service. The cost to purchase Benefit Service Credit shall be based on the actuarial present value as follows:

- Active Participant's cost will be equal to the number of years or fraction of years being purchased, multiplied by the Participant's current pensionable pay, and multiplied by the applicable annual normal cost rate based on the Participant's age last birthday as prescribed in Appendix E-1. For a Participant who is working part-time, the cost will be based upon their current annualized full-time pay.
- A retiring Participant's cost will be based on the present value of the increase in his retirement benefit based on factors as prescribed in Appendix E-2.

## E.3 Application and payment process

An eligible Participant who wished to purchase Benefit Service Credit must apply to the Retirement Plan Administration Committee in writing, stating the desired period of service to be purchased and supplying proof of eligible military service. Upon receipt of a valid application, the Committee will notify the Participant of the cost for purchasing such service and an explanation of methods for payment within sixty days. The methods for payment include a roll-over from another qualified plan, such as an IRA or 401(k), or a personal check. Further, the Participant will be notified that payments made by personal check are not tax deductible.

E.4 Other

Participants who purchase Benefit Service Credit will receive a plan benefit no less than a full refund, without interest, of their payment to purchase such credit.

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

BENEFIT SERVICE CREDIT PURCHASE

Active Participant Cost Factor To Be Applied To  
Current Annual Pensionable Pay

| Age | Regular Employees | Commissioned Law<br>Enforcement Officers |
|-----|-------------------|--|
| 20  | 1.15%             | 2.29%                                    |
| 21  | 1.26%             | 2.52%                                    |
| 22  | 1.39%             | 2.77%                                    |
| 23  | 1.53%             | 3.05%                                    |
| 24  | 1.66%             | 3.32%                                    |
| 25  | 1.90%             | 3.79%                                    |
| 26  | 2.14%             | 4.27%                                    |
| 27  | 2.22%             | 4.77%                                    |
| 28  | 2.41%             | 4.92%                                    |
| 29  | 2.57%             | 5.29%                                    |
| 30  | 2.75%             | 5.54%                                    |
| 31  | 3.03%             | 5.91%                                    |
| 32  | 3.23%             | 6.25%                                    |
| 33  | 3.44%             | 6.69%                                    |
| 34  | 3.62%             | 6.87%                                    |
| 35  | 3.90%             | 7.26%                                    |
| 36  | 4.10%             | 7.75%                                    |
| 37  | 4.28%             | 8.00%                                    |
| 38  | 4.49%             | 8.63%                                    |
| 39  | 4.75%             | 9.06%                                    |
| 40  | 5.06%             | 9.43%                                    |
| 41  | 5.39%             | 9.73%                                    |
| 42  | 5.64%             | 10.29%                                   |
| 43  | 5.95%             | 10.91%                                   |
| 44  | 6.29%             | 11.42%                                   |
| 45  | 6.62%             | 11.75%                                   |
| 46  | 7.02%             | 12.27%                                   |
| 47  | 7.29%             | 12.33%                                   |
| 48  | 7.83%             | 12.68%                                   |
| 49  | 8.28%             | 13.88%                                   |
| 50  | 8.79%             | 14.19%                                   |
| 51  | 9.33%             | 14.28%                                   |
| 52  | 9.88%             | 15.21%                                   |
| 53  | 10.20%            | 15.83%                                   |
| 54  | 10.76%            | 16.40%                                   |
| 55  | 10.54%            | 16.48%                                   |
| 56  | 10.82%            |  |
| 57  | 11.02%            |  |
| 58  | 11.42%            |  |
| 59  | 11.78%            |  |
| 60  | 11.83%            |  |

RETIREMENT PLAN FOR EMPLOYEES  
OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

BENEFIT SERVICE CREDIT PURCHASE

Retiring Participant Cost Factor To Be Applied To  
The Annual Increase in Life Annuity Benefit

| Age | Regular Employees | Commissioned Law<br>Enforcement Officers |
|-----|-------------------|--|
| 45  |                   | 11.5567                                  |
| 46  |                   | 11.4639                                  |
| 47  |                   | 11.3669                                  |
| 48  |                   | 11.2657                                  |
| 49  |                   | 11.1600                                  |
| 50  |                   | 11.0499                                  |
| 51  |                   | 10.9351                                  |
| 52  |                   | 10.8154                                  |
| 53  |                   | 10.6903                                  |
| 54  |                   | 10.5594                                  |
| 55  | 10.4225           | 10.4225                                  |
| 56  | 10.2787           | 10.2787                                  |
| 57  | 10.1278           | 10.1278                                  |
| 58  | 9.9691            | 9.9691                                   |
| 59  | 9.8025            | 9.8025                                   |
| 60  | 9.6279            | 9.6279                                   |
| 61  | 9.4455            | 9.4455                                   |
| 62  | 9.2556            | 9.2556                                   |
| 63  | 9.0587            | 9.0587                                   |
| 64  | 8.8554            | 8.8554                                   |
| 65  | 8.6468            | 8.6468                                   |
| 66  | 8.4339            | 8.4339                                   |
| 67  | 8.2178            | 8.2178                                   |
| 68  | 7.9993            | 7.9993                                   |
| 69  | 7.7791            | 7.7791                                   |
| 70  | 7.5570            | 7.5570                                   |

RETIREMENT PLAN FOR EMPLOYEES OF THE NAVAJO NATION  
AND PARTICIPATING AFFILIATES

ENHANCED RETIREMENT PROGRAM ("ERP") OF 2021

F.1 Purpose

The purpose of the Enhanced Retirement Program ("ERP") is to offer an enhanced retirement benefit package to those Navajo Nation employees retiring due to the Coronavirus ("COVID-19"), to reward eligible employees for their service and contribution to the Navajo Nation, and provide incentive for ERP Eligible Participants to retire on a voluntary basis. This ERP is voluntary, and ERP Eligible Participants who elect to retire during the ERP Window Period shall receive ERP Benefit Enhancement under the Plan.

F.2 ERP Eligible Participant

A Participant other than an Ineligible Participant who meets the following conditions:

- (a) Is a regular status employee of the Navajo Nation as described in Section 1.22, is at least sixty (60) years of age with at least ten (10) years of Vesting Service and is a regular status employee as of March 31, 2021; or
- (b) Is described in F.7.

F.3 Ineligible Participants

Notwithstanding having met the criteria set forth in Section F.2 of this Appendix F, the following categories of Navajo Nation employees as of March 31, 2021 are ineligible for participation in the ERP:



- (a) Commissioned Law Enforcement Officers;
- (b) Judges;
- (c) Council Delegates;
- (d) Political Appointees;
- (e) Temporary employees; or
- (f) Participants with benefits accruing from service with an Affiliate (that is, those with no service as a regular status employee of the Navajo Nation).

#### F.4 ERP Window Period

An ERP Eligible Participant will be entitled to the ERP Benefit Enhancement described in Section F.5 of this Appendix F, provided the Participant makes an election in the manner prescribed by the Plan Administrator between June 11, 2021 and July 28, 2021, to participate in this ERP with a retirement from Service date on or before September 30, 2021. An ERP Eligible Participant may revoke his/her election to participate in this ERP within seven (7) calendar days after the original election is made.

#### F.5 ERP Benefits Enhancement

An ERP Eligible Participant who elects to participate during the ERP Window Period and retires from Service on or before September 30, 2021 shall be entitled to one the following Benefits Enhancement

options:

- (a) For purposes of calculating the ERP Eligible Participant's Normal Retirement Benefit, in accordance with Section 5.01 of the Plan, and based on the ERP Eligible Participant's Final Average Earnings and the ERP Eligible Participant's number of years of Benefit Service at his Retirement Date, the ERP Eligible Participant's number of years of Benefit Service shall be increased by three (3);
- (b) For purposes of calculating the ERP Eligible Participant's Postponed Retirement Benefit, in accordance with Section 5.02 of the Plan, and based on the ERP Eligible Participant's Final Average Earnings and the ERP Eligible Participant's number of years of Benefit Service at his Postponed Retirement Date, the ERP Eligible Participant's number of years of Benefit Service shall be increased by three (3);
- (c) For purposes of calculating the ERP Eligible Participant's Early Retirement Benefit, in accordance with Section 5.03 of the Plan, and based on the ERP Eligible Participant's Final Average Earnings and the ERP Eligible Participant's number of years of Benefit Service at his Early Retirement Date, the ERP Eligible Participant's number of years of Benefit Service shall be increased by three (3).
  - 1) At the election of the ERP Eligible Participant, he may receive his Early Retirement Benefit as an annuity, commencing at his Early Retirement Date or at any date thereafter, in a reduced amount calculated by reducing the Early Retirement Benefit by five twelfths of one percent (5/12 %) for each month by which the ERP Benefit Commencement Date precedes his Normal Retirement Date.

F.6 Commencement of ERP Benefit Enhancement

Any ERP Benefit Enhancement payable under this Appendix F shall commence at the same Benefit Commencement Date elected by the Participant for benefits payable pursuant to Sections 5.01, 5.02, or 5.03 of the Plan.

F.7 Retirements Prior to ERP Window Period

Notwithstanding any provisions in this Appendix F to the contrary, an ERP Eligible Participant who terminated employment with the Navajo Nation after the commencement of COVID-19 related office closures (see Navajo Nation Executive Order 001-20), commenced benefit payments on or after April 1, 2020, and who would otherwise satisfy the conditions described in Section F.2 (a) as of March 31, 2021, if employment had continued until that date, shall be entitled to the ERP Benefit Enhancement beginning October 1, 2021.

F.8 Form of Payment

Any ERP Benefit Enhancement payable under this Appendix F shall be paid in the same form elected by the Eligible Participant pursuant to Article 9, for benefits payable under Sections 5.01, 5.02, or 5.03 of the Plan.

F.9 Other Plan Provisions

This Appendix F shall apply only to ERP Eligible Participants as described in Section F.2. Except as otherwise specified in this Appendix F, all other provisions contained in the Plan shall continue to apply to ERP Eligible Participants.

## BUDGET AND FINANCE COMMITTEE

4 MAY 2021

Regular Meeting

### VOTE TALLY SHEET:

**Legislation No. 0073-21:** An Action Relating to Budget and Finance Committee; Approving an Amendment and Restatement of the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates to Implement Provisions of an Enhanced Retirement Program, Effective April 1, 2021 *Sponsored by Jamie Henio, Council Delegate*

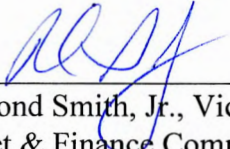
*Motion: Nathaniel Brown*

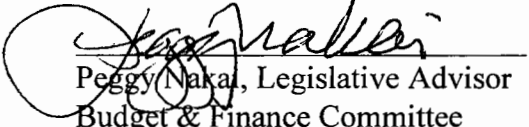
*Second: Jimmy Yellowhair*

*Vote: 5-0, Vice Chairman not voting*

### Final Vote Tally:

|                   |     |  |
|-------------------|-----|--|
| Jamie Henio       | yea |  |
| Raymond Smith Jr. |     |  |
| Elmer P. Begay    | yea |  |
| Nathaniel Brown   | yea |  |
| Amber K. Crotty   | yea |  |
| Jimmy Yellowhair  | yea |  |

  
Raymond Smith, Jr., Vice Chairman  
Budget & Finance Committee

  
Peggy Nakai, Legislative Advisor  
Budget & Finance Committee