

**THE WHATCOM TRANSIT AUTHORITY**  
**DEFERRED COMPENSATION 457 PLAN AND TRUST**  
**RESTATED EFFECTIVE JANUARY 1, 2002**

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	1
II. DEFINITIONS .....	1
III. ADMINISTRATION .....	5
IV. PARTICIPATION IN THE PLAN .....	6
V. BENEFITS UNDER THE PLAN .....	7
VI. TRANSFERS .....	12
VII. TRUST PROVISIONS .....	13
VIII. NON-ASSIGNABILITY .....	19
IX. PRE-1997 PROHIBITION AGAINST FUNDING .....	19
X. AMENDMENT OR TERMINATION OF PLAN AND TRUST .....	20
XI. RELATIONSHIP TO OTHER PLANS .....	20
XII. APPLICABLE LAW .....	21

# **THE WHATCOM TRANSPORTATION AUTHORITY DEFERRED COMPENSATION 457 PLAN AND TRUST**

## **I. INTRODUCTION**

This Plan is established pursuant to Code § 457 by the Whatcom Transit Authority, a Washington municipal corporation exempt from tax as a political subdivision of the State of Washington pursuant to RCW 36.57 et seq. This Plan is an amended and restated plan, and replaces in its entirety the previous Plan with Hartford Life, as executed on September 30, 1992. The Plan and Trust is intended to be an eligible deferred compensation Plan under Section 457 of the Internal Revenue Code of 1986, as amended, (the "Code") and a Trust exempt from tax under Sections 457(g) and 501(a) of the Code.

The primary purpose of this Plan is to attract and retain qualified employees for the Whatcom Transit Authority, by permitting them to enter into agreements which will provide benefits at retirement, death or disability. Nothing contained in this Plan shall be deemed to constitute an employment agreement between any Participant and the Employer and nothing contained herein shall be deemed to give any Participant any right to be retained in the employ of the Employer. The Participant should consult with his own attorney or other representative regarding all tax or other consequences of participation in this Plan.

## **II. DEFINITIONS**

### **2.01 Account Value:**

A Participant's Account Value shall be an amount, held under a valid annuity contract or in Trust, which shall represent the current value of all compensation previously deferred by the Participant, if any, plus investment gains and losses attributable thereto.

### **2.02 Administrative Committee:**

The Committee comprised of individuals appointed by the Board of Directors for the purpose of administering this Plan.

### **2.03 Basic Deferral:**

An amount equal to a percentage or dollar amount of the Participant's monthly compensation as elected by the Participant from year to year.

### **2.04 Beneficiary:**

The individual or individuals (including any trust) designated by the Participant in the Participant's Participation Agreement with the Employer to whom benefits will be payable in the event of the Participant's death.

2.05     Benefit Payment Agreement:

The Agreement executed between a Participant and the Employer prior to the Participant's severance from employment, or between a deceased Participant's beneficiary and the Employer providing for the manner of benefit payments, the basis for measuring the amount of payments, and the designation of beneficiaries during the period benefit payments are made.

2.06     Compensation:

The total earnings, including wages and salaries paid to an Employee by the Employer as remuneration for services rendered.

2.07     Deferred Compensation:

The amount of compensation not yet earned, which the Participant and the Employer mutually agree shall be deferred in accordance with the provisions of this Plan and Trust.

2.08.    Disability:

Disability of a Participant shall mean the inability of the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which may be expected to result in death or to be of long-continued and indefinite duration.

2.09     Employee:

Any individual who receives compensation from the Employer as remuneration for services rendered to the Employer.

2.10     Employer:

Employer shall mean the Whatcom Transit Authority.

2.11     Includible Compensation:

Compensation payable to an Employee by the Employer for services rendered that is includible in such Employee's gross income for Federal Income Tax purposes.

2.12 Participation Agreement:

The Agreement between a Participant and the Employer providing for amounts of deferred compensation, the basis for measuring the value of compensation deferred, and the Participant's Beneficiaries.

2.13 Maximum Limitation:

The maximum amount that may be deferred under this Plan for the taxable year of a Participant. Such amount shall be either the Normal Limitation or Catch-Up Limitation, whichever is applicable.

- (a) **NORMAL LIMITATION:** The maximum amount deferred shall not exceed the lesser of \$11,000 (as adjusted for the calendar year to reflect increases in cost-of-living in accordance with Code §§ 457(e)(15) and 415(d)) or 100% of the Participant's Includible Compensation. In accordance with the above provisions, the maximum deferral amount shall be \$12,000 for 2003, \$13,000 for 2004, \$14,000 for 2005 and \$15,000 for 2006, subject to the catch-up election rules and other limitations regarding Includible Compensation as defined in the Plan.
- (b) **CATCH-UP ELECTIONS UPON ATTAINMENT OF AGE 50:** Any Participant who is eligible to make an elective deferral of Compensation under this Plan, and who has attained age 50 prior to the close of the Plan Year, shall be eligible to make catch-up contributions in accordance with and subject to the limitations of Sections 457 and 414(v) of the Code. For purposes of this Section 2.13(b) the applicable catch-up election amount shall be \$1,000 for 2002, \$2,000 for 2003, \$3,000 for 2004, \$4,000 for 2005 and \$5,000 for 2006 (as adjusted). Notwithstanding the foregoing, the catch-up provisions of this Section 2.13(b) shall not apply during the Participant's last three (3) taxable years ending before the Participant attains Normal Retirement Age. In such case, the catch-up limitation set forth in Section 2.13(c) shall apply.
- (c) **CATCH-UP LIMITATION:** For each one or more of the last three (3) taxable years of a Participant ending before the Participant's attainment of Normal Retirement Age, the maximum amount deferred for each such year shall be the lesser of
  - (1) twice the dollar amount in effect under the Normal Limitation provisions of Section 2.13(a), or
  - (2) the sum of the Normal Limitation in Section 2.13(a), plus that portion of the Normal Limitation not used in each of the prior taxable years of the Participant in which the Participant was eligible to participate in the Plan.

Effective for Plan Years after December 31, 2001, in determining the Maximum Limitation for any taxable year of the Participant, any amount excludible from the Participant's Compensation by reason of a contribution by the Employer to a Plan described in Section 403(b), 401(k), or 408(k) of the Internal Revenue Code of 1986, as amended, shall not be treated as an amount deferred under this Plan.

2.14 Normal Retirement Age:

The Normal Retirement Age and Normal Retirement Date for a Participant shall be the last day of the month in which a Participant retires pursuant to the Washington Public Employees Retirement System.

2.15 Participant:

Any Employee or independent contractor of the Employer who has executed a Participation Agreement with the Employer agreeing to the provisions of this Plan.

2.16 Plan:

The Whatcom Transit Authority Deferred Compensation 457 Plan and Trust Agreement.

2.17 Plan Anniversary:

The Plan Anniversary Date is January 1 of each calendar year.

2.18 Plan Year:

A Plan year commences on a Plan Anniversary Date and ends on the day immediately preceding the next Plan Anniversary Date.

2.19 Required Beginning Date:

The date that benefits from the Plan must commence to be paid to a Participant. The Required Beginning Date for a Participant is April 1 of the calendar year following the later of (a) the calendar year in which the Employee attains age 70½, or (b) the calendar year in which the Employee retires.

2.20 Severance from Employment:

A Participant shall be deemed to have severed employment with the Employer for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated as determined under Code § 457(d)(1)(A)(ii). In the case of an independent contractor, the relationship

with Whatcom Transit Authority is considered to have actually terminated upon the expiration of the contract under which services are performed for the Transit Authority if the expiration constitutes a good faith and complete termination of the contractual relationship, the Transit Authority does not anticipate a renewal of the contractual relationship, and the Transit Authority does not contemplate that the independent contractor will become an Employee of the Whatcom Transit Authority.

2.21 Trustee:

The Employer has appointed a Trustee Committee (comprised of three (3) individuals) to hold all Plan assets in Trust, unless such assets are held under a valid annuity contract as described in Code § 401(f). In case of removal, resignation or a vacancy in the office of Trustee, the Board of Directors shall take immediate steps to appoint a successor Trustee to the Committee, and in the interim the remaining Committee Members may exercise any and all of the powers, authority, duties and discretion conferred upon the Trustee Committee pending the filling of the vacancy. The Trustee Committee shall serve without compensation for services as such, but the Employer shall pay all expenses of the Trustee Committee, including the expense for any insurance or bond covering the acts of the Trustee Committee.

### III. ADMINISTRATION

- 3.01 This Plan shall be administered by the Administrative Committee, which shall consist of the Board of Directors or the individuals designated pursuant to Section 2.02 by appointment of the Board of Directors from time to time. The Committee shall act as an agent of the Employer in all matters concerning the administration of the Plan. The Committee shall have full power to adopt, amend, and revoke such rules and regulations consistent with and on behalf of the Employer under this Plan, and to make discretionary decisions affecting the rights or benefits of Participants under Section 5.08 of the Plan.
- 3.02 Any Employee who is charged with administration responsibilities hereunder may participate in the Plan under the same terms and conditions that apply to other employees. However, that individual shall not have the power to participate in discretionary action taken with respect to his or her participation under Section 5.08 of the Plan.
- 3.03 The Employer may contract with selected insurance and/or mutual fund companies to provide services under this Plan for the convenience of the Employer, including, but not limited to, the enrollment of Employees as Participants, the maintenance of individual accounts and other records, the making of periodic reports to Participants, and directing the disbursement of benefits to Participants from annuity contracts and/or amounts held by the Trustee Committee in Trust.

#### IV. PARTICIPATION IN THE PLAN

4.01 Eligibility:

Eligibility under this Plan shall be limited to individuals described in Section 2.09. The Employer may extend eligibility under this Plan to other Employees, individuals and independent contractors by amending this Section 4.01.

4.02 Enrollment:

Any eligible Employee (as set forth in Section 2.09 and 4.01) may become a Participant in the Plan as of the restated effective date of this Plan, or, if later, the first day of the pay period next following the date such person executes a Participation Agreement with the Employer to defer Compensation not yet earned, and assenting to the provisions of the Plan.

4.03 Minimum Deferral:

The minimum amount of compensation that must be deferred by an eligible Participant is \$30.00 per month.

4.04. Maximum Deferral:

Subject to Section 4.09, the maximum amount that may be deferred by any Participant shall be the Maximum Limitation as defined in Section 2.13 of this Plan and Section 457 of the Internal Revenue Code of 1986, as amended.

4.05 Changing Amount of Deferral:

A Participant may increase or decrease the Compensation to be deferred with respect to Compensation not yet earned by giving the Employer notice in writing on the Employer's form provided for this purpose. Such increase or decrease shall be implemented as of the next payroll period (with adequate advance notice of such change by the Participant) as directed or approved by the Committee.

4.06 Ceasing Deferrals:

A Participant may cease the deferral of Compensation without withdrawing from the Plan and Trust by giving the Employer written notice on a form provided by the Employer. The Participant may reinstate deferrals as of any payroll period (with adequate advance notice of such reinstatement by the Participant) as directed or approved by the Committee.



4.07 Recommencing Deferrals:

A Participant who returns to active service with the Employer after a Severance from Employment, or who has made a withdrawal under Section 5.08, or who has ceased deferrals under Section 4.06, may again become an active Participant by executing a new Participation Agreement with the Employer prior to the beginning of the calendar month or pay period in which it is to be effective.

4.08 Employer Contributions:

Currently, there are no provisions for contributions by the Employer to this Plan, other than transmitting Employee Basic Deferrals as described herein.

4.09 Uniform Services Employment and Re-Employment Rights Act of 1994.

This Plan shall also include any Service that the Plan must credit in order to satisfy the crediting of Military Service requirements of the Uniform Services Employment and Re-Employment Rights Act of 1994 ("USERRA") in accordance with the provisions of Code § 414(u). In applying these provisions, the Employer shall allow a re-employed individual whose absence is due to uniformed service to contribute make-up contributions during the period which begins on the date of re-employment and has the same length as the lesser of (a) the period of the individual's absence due to uniformed service multiplied by three, or (b) five years. In the event such individual elects to contribute make-up contributions, the Employer is required to match any such elective deferrals at the same rate that would have been required had the deferrals actually been made during the period of uniformed service. Any additional elective deferrals, Employer matching contributions, and any other Employee contributions will be treated as make-up contributions for purposes of the USERRA provisions exempting such contributions from the maximum deductible contribution limits otherwise applicable to a Code § 457 Plan arrangement. All such make-up contributions shall be made without regard to any actual or constructive earnings that would otherwise be credited to such account with respect to contributions, and shall be administered, for this purpose, in accordance with the USERRA provisions in Code § 414(u) and the reporting requirements in IRS Announcement 98-45, as may be amended from time to time. The provisions of this paragraph are effective as of December 12, 1994, the effective date of the benefits-related provisions of USERRA.

V. BENEFITS UNDER THE PLAN

5.01 Amount of Benefits:

The Deferred Compensation payments and the death benefits will be in an amount equal to the amount calculated as the Account Value for the Participant under the annuity

contract or Trust account set aside for the Participant. The payment amount may also be affected by the age of the Participant at the time of retirement, disability, Separation from Service, Required Beginning Date, or death.

5.02 Method of Benefit Payment:

Benefits shall be paid according to the payment option selected by the Participant as set forth on such Participant's Benefit Payment Agreement.

(a) The options shall be as follows:

- (1) Lump-Sum Payment;
- (2) Monthly, quarterly, semi-annual or annual installments over a period established by the Administrative Committee, not exceeding the life expectancy of the Participant, or the joint life and last survivor expectancy of the Participant and his Beneficiary;
- (3) A life annuity payable during the lifetime of the Participant;
- (4) A life annuity with "period certain guarantee" to be payable during the lifetime of the Participant, or his Beneficiary, with the guarantee that if at the Participant's death, payments have not been made for the guaranteed period as elected, then payments will continue for the benefit of the Participant's named Beneficiary. The guaranteed period to be elected must be either ten (10) or fifteen (15) years if the Beneficiary is not a spousal Beneficiary. For a spousal Beneficiary, the guaranteed period to be elected may be ten (10), fifteen (15) or twenty (20) years, but may not exceed the life expectancy of the Participant and his spousal Beneficiary; or
- (5) Joint and Survivor Life Income Annuity.

(b) If no option has been selected, benefits shall be payable in the form of a 50% Joint and Survivor Life Income Annuity to the Participant and the Participant's spouse, if married, or, in the case of an unmarried Participant, in the form of a Single Life Annuity.

5.03 Commencement of Benefits:

Benefit payments shall commence at the time provided in the Plan, subject to an election by the Participant or Beneficiary, prior to the time such benefits first become payable, to defer the beginning of such payments to a later date as allowed by the Plan and pursuant

to the Benefit Payment Agreement. However, subject to Section 2.19, in no event shall benefits commence beyond the later of the following dates:

- (a) sixty (60) days after the close of the Plan Year in which the Participant attains (or would have attained) Normal Retirement Age; or
- (b) sixty (60) days after the close of the Plan Year in which Severance from Employment with the Employer occurs.

If a Participant has elected, in accordance with the Plan, to defer the commencement of distributions beyond the first permissible payout date, then the Participant may make an additional election to further defer the commencement of distributions, provided that the election is filed before distributions actually begin and the later commencement date meets the required distribution commencement date provisions of Code §§ 401(a)(9) and 457(d)(2). A Participant may not make more than one such additional deferral election after the first permissible payout date. For purposes of this paragraph, the "first permissible payout date" is the earliest date on which the Plan permits payments to begin after severance from employment, disregarding payments to a Participant who has an unforeseeable emergency or attains age 70½, or under any in-service distribution provisions of the Plan, as amended.

#### 5.04 Retirement:

Beginning on the first day of the calendar month following the Participant's retirement, or as soon as administratively practicable thereafter, the Participant shall be entitled to receive from the Employer a fixed or variable payment according to the option selected by the Participant in accordance with Section 5.02 and set forth on the Participant's Benefit Payment Agreement prior to the time benefits become payable.

#### 5.05 Death Benefits:

##### (a) Death of the Participant Prior to Benefit Commencement:

- (1) Death Prior to January 1, 2002. If a Participant died prior to January 1, 2002, and before the Participant had begun to receive retirement benefits, the Employer, within sixty (60) days of receipt of satisfactory proof of death, shall cause to be paid to the Beneficiary an amount equal to the death benefit payable under the option selected by the Participant in accordance with Section 5.02 unless the Beneficiary irrevocably elects to defer the distribution of any payment until a date not later than sixty (60) days after the date the Participant would have attained Normal Retirement Age. The death benefit shall be paid to such Beneficiary under the option selected by the Beneficiary, in substantially non-increasing payments made no less

frequently than annually, over a period not exceeding fifteen (15) years or, if the Beneficiary is the Participant's surviving spouse, over a period not exceeding twenty (20) years, but in no event beyond the life or life expectancy of the surviving spouse.

- (2) Death on or after January 1, 2002. If a Participant dies on or after January 1, 2002, the Employer, within sixty (60) days of receipt of satisfactory proof of death, shall cause to be paid to the Beneficiary an amount equal to the death benefit provided in the immediately preceding paragraph, subject only to the requirement that the distribution meets the minimum distribution requirements of Code §§ 401(a)(9) and 457(d)(2). The provisions of this paragraph shall be administered in accordance with the minimum distribution proposed regulations issued January 17, 2001, by the Internal Revenue Service, which shall be effective, for purposes of any distribution under this Plan, as of January 1, 2002, or such other date as may be specified in guidance published by the Internal Revenue Service.
- (3) No Beneficiary Designation. If no Beneficiary has been designated, or if no designated Beneficiary survives the Participant for a period of thirty (30) days, then the Employer shall cause such death benefit to be paid to the estate of the Participant.

(b) Death of the Participant Subsequent to Benefit Commencement:

- (1) Death Prior to January 1, 2002. If the Participant died prior to January 1, 2002, and after the Participant had begun to receive retirement benefits, the Employer, within sixty (60) days of receipt of satisfactory proof of death, shall continue payments to the Beneficiary under the original payout schedule, provided that the payments are made in substantially non-increasing amounts payable no less frequently than annually.
- (2) Death on or after January 1, 2002. If a Participant dies on or after January 1, 2002, the Employer, within sixty (60) days of receipt of satisfactory proof of death, shall cause to be paid to the Beneficiary an amount equal to the death benefit provided in the immediately preceding paragraph, subject only to the requirement that the distribution meets the minimum distribution requirements of Code §§ 401(a)(9) and 457(d)(2). The provisions of this paragraph shall be administered in accordance with the minimum distribution proposed regulations issued January 17, 2001, by the Internal Revenue Service, which shall be effective, for purposes of any distribution under this Plan, as of January 1, 2002, or such other date as may be specified in guidance published by the Internal Revenue Service.

- (3) **No Beneficiary Designation.** If no Beneficiary is designated in the Benefit Payment Agreement, or if no designated Beneficiary survives the Participant for a period of thirty (30) days, then the Employer shall cause to be paid to the estate of the Participant an amount equal to any lump sum death benefit payable under the option specified in the Participant's Benefit Payment Agreement. If the designated Beneficiary survives the Participant for a period of thirty (30) days, but does not survive the period after the Participant's death during which such payment(s) are to be made, then the Employer shall cause to be paid to the estate of any such Beneficiary an amount equal to any lump sum death benefit payable under the option specified in the Participant's Benefit Payment Agreement.

5.06 **Disability Benefits:**

In the event a Participant becomes disabled as defined in Section 2.08 before the selected commencement date of benefits, the Participant may elect to commence benefits under one of the available options on the first day of the calendar month following the determination of disability and Severance from Employment, or as soon as administratively practicable thereafter. An election to receive disability benefits must be made within a reasonable time after the determination of disability. The disability of any Participant shall be determined by the Administrative Committee in accordance with uniform principles consistently applied, upon the basis of such evidence as the Administrative Committee deems necessary and appropriate.

5.07 **Severance From Employment:**

- (a) If the Participant's Benefit Payment Agreement provides that the payment of benefits shall commence following Severance from Employment, at some later specified date, and the Participant has a Severance from Employment before attaining Normal Retirement Age, the total of the Participant's Account Value under the Trust shall be payable to the Participant commencing on the first day of the calendar month following the Participant's Severance from Employment, or as soon as administratively practicable thereafter, or such later date as may be selected by the Participant and under the option selected by the Participant.
- (b) Notwithstanding the provisions above to the contrary, if the Participant incurs a Severance from Employment with Employer and accepts employment with another employer which maintains an eligible deferred compensation plan under Code § 457, as amended, the amounts deferred under this Plan may, at the election of the Participant be transferred directly to such other plan, provided such plan allows for the direct transfer and acceptance of such amounts. Furthermore, in the case of an employer described in Code § 457(e)(1)(A), if any portion of the balance to the credit of an Employee is paid to the Employee in an "eligible rollover distribution"

(within the meaning of Code § 402(c)(4)) the Employee may transfer any portion of the property the Employee receives in such distribution to an "eligible retirement plan" as described in Code § 402(c)(8)(B) as permitted under Code § 457(e)(16). The rules of Code §§ 402(c)(2) through (7) and (9) as well as Code § 402(f) shall apply for purposes of any such eligible rollover distribution, and the rollover, if applicable, shall be subject to such reporting requirements as may be applicable under Code § 4974(c).

5.08 Withdrawal Prior to Severance From Employment:

- (a) For serious financial hardships which are beyond the Participant's control, a Participant may apply for withdrawal from the Plan and Trust prior to retirement or Severance from Employment with the Employer. If such application for withdrawal is approved by the Administrative Committee, the withdrawal will be effective either on the date specified in the Participant's application for withdrawal or on the date of approval by the Administrative Committee, whichever is later.
- (b) If a withdrawal request is approved, the Administrative Committee shall direct the annuity contract issuer or the Trustee, whichever is applicable, to pay the Participant an amount of money sufficient to meet the unforeseeable financial emergency.
- (c) Following a withdrawal of funds under this Section, if the Participant is deferring a portion of his salary, such deferrals shall be suspended and the Participant's salary will be thereupon restored to its full level. The Participant may not reinstate his deferral election until the next open enrollment date following the effective date of the withdrawal under this Section 5.08.
- (d) An unforeseeable financial emergency involves only circumstances of sudden and unexpected illness or accident of the Participant or a dependent, loss of property due to fire, casualty, or other similar extraordinary or unforeseeable circumstances arising as a result of events beyond the control of the Participant which would cause severe financial hardship to the Participant if early withdrawal were not permitted. Payment may not be made to the extent that such hardship is or may be relieved by other financial resources available to the Participant, including insurance reimbursement, cessation of deferrals under the Plan or liquidation of other assets, to the extent the liquidation of such assets would not itself cause severe financial hardship. Unforeseeable emergencies do not include the payment of tuition or educational costs for the Participant or a dependent of the Participant, or the desire to purchase a primary or secondary residence.

VI. TRANSFERS

6.01 Acceptance of Transfers:

With Administrative Committee and Trustee approval this Plan and Trust may accept the direct transfer of amounts deferred by an individual under another eligible deferred compensation plan pursuant to Code § 457, as amended. In addition, if the Plan is sponsored by an employer described in Code § 457(e)(1)(A), the Participant may transfer any other "eligible rollover distribution" in a similar manner as described in Section 5.07(b), and subject to the rollover provisions of Code § 457(e)(16).

6.02 Plan-To-Plan Transfers:

A Participant may elect to have the value of his or her Account Value transferred to another eligible deferred compensation plan, upon such Participant's Severance from Employment with the Employer. See also Section 5.07(b).

## VII. TRUST PROVISIONS

7.01 The provisions of the Article VII are intended to comply with the Small Business Job Protection Act of 1996 (P.L. 104-188), the Taxpayer Relief Act of 1997 (P.L. 105-34) and the Mandatory Trust Requirements of Code § 457(g) as implemented by Section 1448 of the Small Business Job Protection Act of 1996 and IRS Revenue Procedure 98-41. As provided in Revenue Procedure 98-41 and applicable legislative history, the Mandatory Trust Requirements of Code § 457(g) shall not apply in the case of assets held under a valid annuity contract as described in Code § 401(f). To the extent such assets are not held in a valid annuity contract, all such assets shall be held by the Trustee pursuant to the provisions of this Article VII. The Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed hereunder. The Trustee shall have full discretion and authority with regard to investment and re-investment of the Trust Fund, except with respect to a Plan asset under the control or direction of properly appointed Investment Manager or with respect to a Plan asset subject to Employer direction, Participant direction or Administrative Committee direction of investment. The Trustee shall coordinate its investment policy with Plan financial needs as communicated to it by the Employer. The Trustee is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

- (a) To invest any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of

any kind, real or personal, and to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, and to make any other investments the Trustee deems appropriate, as a prudent man would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustee in good faith shall be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;

- (b) To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest. If the Trustee is a bank or similar financial institution supervised by the United States or by any State, this Paragraph (b) includes specific authority to invest in any type of deposit of the Trustee (or of a bank related to the Trustee) at a reasonable rate of interest or in a common trust fund as described in Code § 584 which the Trustee (or its affiliate, as defined in Code § 1504) maintains exclusively for the collective investment of money contributed by the bank (or its affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency;
- (c) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such consideration and on such terms and conditions as the Trustee shall decide;
- (d) To credit and distribute the Trust as directed by the Administrative Committee. The Trustee shall not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee shall be accountable only to the Administrative Committee for any payment or distribution made by it in good faith on the order or direction of the Administrative Committee;
- (e) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge; to make loans on a nondiscriminatory basis to a Participant in accordance with the loan policy established by the Administrative Committee, provided any loan is adequately secured, bears a reasonable rate of interest, provides for repayments within a specified time, prohibits offset of the Participant's Nonforfeitable Accrued Benefit for loan default prior to the time the Trustee otherwise would distribute the Participant's Nonforfeitable Accrued Benefit, and otherwise conforms to the Participant loan exemption provided by Code § 457 and regulations thereunder.



- (f) To compromise, contest, arbitrate or abandon claims and demands, in its discretion;
- (g) To have with respect to the Trust all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights;
- (h) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship;
- (i) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;
- (j) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction;
- (k) To file all tax returns required of the Trustee, if any;
- (l) To furnish to the Employer and the Administrative Committee an annual statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year. Upon receipt of written approval of such statement of account or upon the expiration of 90 days from the date of filing such report with the Employer and the Administrative Committee, the Trustee shall be released and discharged as to all items and matters set forth therein as if such statement had been settled and allowed by a decree of a court of competent jurisdiction, except as to any items to which the Employer or the Administrative Committee files written exceptions or objections within said 90-day period or within such longer period as authorized by applicable law;
- (m) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustee shall not be obliged or required to do so unless indemnified to its satisfaction.

7.02 RECORDS AND STATEMENTS. The records of the Trustee pertaining to the Plan shall be open to the inspection of the Administrative Committee and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Administrative Committee may specify in writing. The Trustee shall furnish the Employer or Administrative Committee with whatever information relating to the Trust Fund the Employer or Administrative Committee reasonably considers necessary.

- 7.03 FEES AND EXPENSES FROM FUND. The Trustee shall pay all fees and expenses reasonably incurred by it in its administration of the Plan from the Trust Fund unless the Employer pays the fees and expenses. No person who is receiving full pay from the Employer shall receive compensation for services as Trustee from the Trust Fund. The Administrative Committee shall not treat any fee or expense paid, directly or indirectly, by the Employer as an Employer Contribution, provided the fee or expense relates to the ordinary and necessary administration of the Fund.
- 7.04 PARTIES TO LITIGATION. Except as otherwise provided by applicable law, only the Employer, the Administrative Committee and the Trustee shall be necessary parties to any court proceeding involving the Trustee as the Trustee of the Trust Fund or the Trust Fund. No Participant, or Beneficiary, shall be entitled to any notice of process unless required by applicable law. Any final judgment entered in any proceeding shall be conclusive upon the Employer, the Administrative Committee, the Trustee, Participants and Beneficiaries.
- 7.05 PROFESSIONAL AGENTS. The Trustee may employ and pay from the Trust Fund, to the extent not otherwise paid by the Employer, reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.
- 7.06 DISTRIBUTION OF CASH OR PROPERTY. The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee. For purposes of a distribution to a Participant or to a Participant's designated Beneficiary or surviving spouse, "property" shall include a Nontransferable Annuity contract, provided the contract satisfies the distribution requirements of this Plan.
- 7.07 DISTRIBUTION DIRECTIONS. If no one claims a payment or distribution made from the Trust, the Trustee shall promptly notify the Administrative Committee and shall handle or administer the payment in accordance with the subsequent direction of the Administrative Committee.
- 7.08 THIRD PARTY. No person dealing with Trustee shall be obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Plan. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and shall not be liable to any person in so acting. The certificate of the Trustee that it is acting in accordance with the Plan shall be conclusive in favor of any person relying on the certificate. If more than one Trustee or individual shall act as Trustee(s), the decision of a majority of the Trustees shall control with respect to any decision regarding the administration or investment of the Trust Fund.

- 7.09      RESIGNATION. The Trustee may resign at any time as Trustee of the Plan by giving 30 days' written notice in advance to the Employer and to the Administrative Committee.
- 7.10      REMOVAL. The Employer, by giving 30 days' written notice in advance to the Trustee, may remove any Trustee. In the event of the resignation or removal of the Trustee, the Employer shall appoint a successor Custodian/Trustee if it intends to continue the Plan. During any period the selection of a Trustee is pending, or during any period a Trustee is unable to serve for any reason, the remaining Trustee(s) shall act as the Sole Trustee(s) of the Trust.
- 7.11      INTERIM DUTIES AND SUCCESSOR TRUSTEE. Each successor Trustee shall succeed to the title to the Trust vested in his predecessor by accepting in writing his appointment as successor Trustee and filing the acceptance with the former Trustee and the Administrative Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of written acceptance of the Trust by the successor Trustee, shall execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee shall have and enjoy all of the powers, both discretionary and ministerial, conferred under this Agreement upon his predecessor. A successor Trustee shall not be personally liable for any act or failure to act of any predecessor Trustee except as may be required under applicable law. With the approval of the Employer and the Administrative Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.
- 7.12      VALUATION OF TRUST. The Trustee shall value the Trust Fund as of the close of each Plan Year to determine the fair market value of each Participant's Accrued Benefit in the Trust, and the Trustee shall value the Trust Fund on such other date(s) as directed in writing by the Administrative Committee.
- 7.13      LIMITATION ON LIABILITY -- IF INVESTMENT MANAGER APPOINTED. The Trustee shall not be liable for the acts or omissions of any Investment Manager or Managers the Administrative Committee may appoint, nor shall the Trustee be under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Administrative Committee, the Trustee and any properly appointed Investment Manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager with respect to any part of the Trust Fund under the control of the Investment Manager.
- 7.14      INVESTMENT IN GROUP TRUST FUND. The Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the Trust created under any other qualified retirement plan the Employer maintains. However, the

Trustee shall maintain separate records of account for each Trust in order to reflect properly each Participant's Accrued Benefit under the plan(s) in which he is a Participant.

The Employer specifically authorizes the Trustee to invest all or any portion of the assets comprising the Trust Fund in any group trust fund which at the time of the investment provides for the pooling of the assets of plans qualified under Code § 457. This authorization applies solely to a group trust fund exempt from taxation under Code § 501(a) and the trust agreement of which satisfies the requirements of Revenue Ruling 81-100. The provisions of the group trust fund agreement, as amended from time to time, are by this reference incorporated within this Plan and Trust. The provisions of the group trust fund shall govern any investment of Plan assets in that fund. The Employer shall specify in an attachment to this Agreement, the group trust fund(s), if any, to which this authorization applies.

- 7.15 PARTICIPANT DIRECTION OF INVESTMENT. A Participant shall have the right to direct the Trustee with respect to the investment or reinvestment of the assets comprising the Participant's individual Account only if the Trustee consents in writing to permit such direction. If the Trustee does consent to Participant direction of investment, the Trustee and each Participant shall execute a letter agreement as a part of this Plan containing such conditions, limitations and other provisions they deem appropriate before the Trustee shall follow any Participant direction with respect to the investment or reinvestment of any part of the Participant's Individual Account. The Trustee shall not be liable for any loss, or by reason of any breach, resulting from a Participant's direction of the investment of any part of his individual Account.

Furthermore, the Administrative Committee shall treat a loan made to a Participant in accordance with the loan policy adopted under the Plan (if applicable) as a Participant direction of investment under this Section 7.15 of the borrowing Participant's Account. The loan shall remain a part of the Trust, but, to the extent of the loan outstanding at any time, the borrowing Participant's Account alone shall share in any interest paid on the loan, and it alone shall bear any expense or loss it incurs in connection with the loan. The Trustee may retain any principal or interest paid on the borrowing Participant's loan in an interest bearing segregated account on behalf of the borrowing Participant until the Trustee deems it appropriate to add the amount paid to the Participant's separate Account under the Plan.

- 7.16 INDEMNITY OF COMMITTEE AND TRUSTEES. The Employer indemnifies and saves harmless the members of the Administrative Committee, the Trustee, and each of them, from and against any and all loss resulting from liability to which the Administrative Committee, the Trustee, or the members of the Administrative Committee may be subjected by reason of any act or conduct (except willful misconduct or gross negligence) in their official capacities in the administration of this Trust or Plan or both, including all expenses reasonably incurred in their defense, in case the Employer fails to

provide such defense. The indemnification provisions of this Section 7.16 shall not relieve any Administrative Committee member from any liability he may have under applicable law for breach of a fiduciary duty. Furthermore, the Administrative Committee members and the Employer, and the Trustees and the Employer, may execute a letter agreement further delineating the indemnification agreement of this Section 7.16, provided the letter agreement is consistent with and does not violate applicable law.

#### VIII. NON-ASSIGNABILITY

- 8.01 Subject to Code § 414(p)(11) for "domestic relations orders", it is agreed that neither a Participant nor the Participant's Beneficiary or any other designee shall have any right to commute, sell, assign, transfer or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and non-transferable by operation of law.
- 8.02 Except as provided in Article VII, the Employer shall have no beneficial interest in any assets of the Trust established therein, and no part of any asset in the Trust shall ever revert to or be paid to an Employer, either directly or indirectly; nor shall any part of the corpus or income of the Trust Fund, or any asset of the Trust, be, at any time, used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries. The Trust Fund shall constitute a spendthrift trust under applicable state and federal law.

#### IX. PRE-1997 PROHIBITION AGAINST FUNDING

- 9.01 Prior to the effective date of Code § 457(g) relating to the funding of amounts in trust by an eligible deferred compensation plan, nothing in the Plan shall obligate the Employer to invest Deferred Compensation funds in any annuity contract, mutual fund investment or any other asset. If the Employer shall acquire an annuity contract or any other asset in connection with the liabilities assumed by it hereunder, it is expressly understood and agreed that neither the Participant nor any Beneficiary of the Participant shall have any right with respect to, or claim against, such contract or other asset.
- 9.02 It is also expressly understood and agreed that if the Employer shall acquire an annuity contract or any other asset in connection with the Plan, the Employer shall be the sole applicant and owner thereof. Such contract or other assets shall not be held in any way as collateral security for the fulfillment of obligations of the Employer under this Agreement, and, prior to 1997, shall be subject to the general claims of creditors of the Employer.

- 9.03 Nothing contained in this Article IX shall prohibit the Plan from transferring such pre-1997 amounts or assets to the Trust described in Article VII.

#### X. AMENDMENT OR TERMINATION OF PLAN AND TRUST

- 10.01 The Employer reserves the right to terminate this Plan at any time. Upon such termination, the Participants in the Plan will be deemed to have ceased deferrals under the Plan as of the date of such termination, and the Participant's deferred salary will be restored and paid directly to the Participant as regularly scheduled. The Employer will thereafter retain such Participant's pre-1997 Deferred Compensation Account Value on its books (except to the extent they have been transferred to the Trust established under Article VII), and shall pay benefits under the Plan and Trust according to the Participant's Benefit Payment Agreement, at the time of the Participant's Severance from Employment, or upon the death of the Participant, or such other payment event as described in this Plan and Trust.
- 10.02 The Employer also reserves the right to amend the provisions of this Plan at any time. Notice of any amendment shall be given by the Employer to each Participant then participating in the Plan, and such Participants may elect to cease deferrals under the Plan within thirty (30) days of receiving notice. Upon cessation of deferrals, the Participant's deferred salary will be restored and paid directly to the Participant as regularly scheduled. The Employer will thereafter retain each Participant's Pre-1997 Deferred Compensation Account Value on its books (except to the extent they have been transferred to the Trust established under Article VII) and shall pay benefits under the Plan and Trust according to the Participant's Benefit Payment Agreement, at the time of Severance from Employment by the Participant, or upon the death of the Participant, or such other payment event as described in this Plan.
- 10.03 The Employer also reserves the right of amend the Trust provisions at any time in order to maintain its tax exempt status under Code § 501(a) and/or to comply with the provisions of Code § 457(g), as may be amended from time to time. In addition, the Employer reserves the right to terminate the Trust in conjunction with its election to terminate the Plan (as reserved in Section 10.01), or to continue the Trust as a "frozen Trust" following termination of the Plan, in its sole and absolute discretion.

#### XI. RELATIONSHIP TO OTHER PLANS

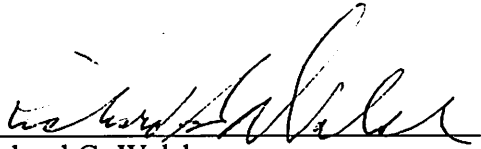
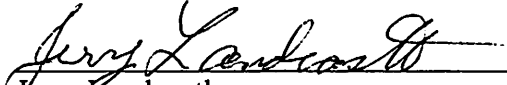
- 11.01 This Plan and Trust shall be effective and operate in addition to any other retirement, pension or benefit plan or arrangement presently in existence or hereinafter established, and participation hereunder shall not affect benefits receivable under any such other plan or arrangement.

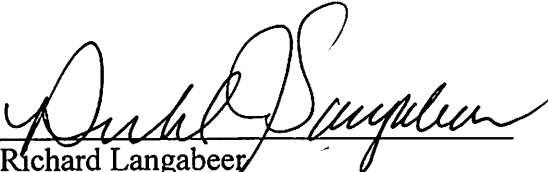
**XII. APPLICABLE LAW**

12.01.1 This plan shall be construed under the laws of the State of Washington, except to the extent federal law preempts or supersedes state law.


IN WITNESS WHEREOF, the Employer has executed this Plan and Trust in Bellingham, Washington, this 23<sup>RD</sup> day of APRIL, 2002, with an effective date of January 1, 2002.

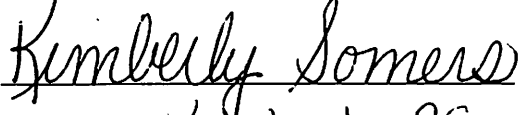
**WHATCOM TRANSPORTATION AUTHORITY:**

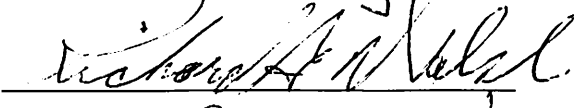
By:    
Richard G. Walsh Jerry Landcastle  
General Manager WTA Board Chairman

Attest:   
Richard Langabeer  
Legal Counsel

**TRUSTEE COMMITTEE:**

By:   
Print Name STEVEN M. CLANCY

By:   
Print Name KIMBERLY SOMERS

By:   
Print Name RICHARD G. WALSH