



## **TRUST AGREEMENT**

### **FOR**

**County of Napa 457 Deferred Compensation Plan and County of Napa  
457 Part-time, Extra Help, Seasonal and Temporary Deferred  
Compensation Plan**

**Reliance Trust Company  
Trustee  
1100 Abernathy Road NE, Suite 400  
Atlanta, GA 30328-5634**

## **TRUST AGREEMENT**

**THIS TRUST AGREEMENT** (the "Agreement") is entered into by and between County of Napa (the "Employer") and Reliance Trust Company (the "Trustee") as of the Effective Date.

### **WITNESSETH:**

**WHEREAS**, the Employer maintains, for the benefit of its eligible employees and those of its participating affiliate entities, the Plan, which is intended to satisfy the requirements of §457 of the Internal Revenue Code of 1986, as amended (the "Code");

**WHEREAS**, the Employer desires to appoint the Trustee as a directed trustee to hold and administer the assets of the Plan in accordance with this Agreement; and

**WHEREAS**, the Trustee has agreed to serve as directed trustee of the trust established under this Agreement;

**NOW, THEREFORE**, the Employer and the Trustee hereby mutually covenant and agree as follows:

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## **ARTICLE 1 DEFINITIONS**

The following words and phrases, when used herein with an initial capital letter, shall have the meanings set forth below or in the Trust Specifications Schedule unless a different meaning plainly is required by the context. Any reference to a section number shall refer to a section of this Agreement unless otherwise specified.

- 1.1 **Alternate Payee** means a person designated to receive all or a portion of the Participant's benefit pursuant to a qualified domestic relations order.
- 1.2 **Beneficiary** means any person designated under the terms of the Plan to receive benefits payable upon the death of a Participant.
- 1.3 **Broker** means a broker-dealer registered under the Securities Exchange Act of 1934 with whom a Participant, Beneficiary or Alternate Payee may enter into a self-directed Brokerage Account to direct the investment of Trust Assets.
- 1.4 **Brokerage Account** means any brokerage account established with a registered broker/dealer for the purposes of investing the Trust Assets.
- 1.5 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.6 **Effective Communication** means written or electronic communication in a form satisfactory to the Trustee, which shall be deemed given when delivered personally, upon receipt of a transmission confirmation if sent electronically or by facsimile or like transmission, and considered delivered upon receipt by Trustee when sent by Federal Express, United Parcel Service, Express Mail, or other reputable overnight courier.
- 1.7 **Effective Date** means the date the agreement is effective as identified on the Trust Specifications Schedule.
- 1.8 **Employer** means the organization identified on the Trust Specifications Schedule.
- 1.9 **Investment Fund** means any of the separate funds, including a Brokerage Account, established by the Employer for the investment of Plan assets.
- 1.10 **Investment Manager** means any person, corporation or other organization or association appointed by the Employer consistent with the terms of §4.3 to manage, acquire or dispose of the assets of an Investment Fund.
- 1.11 **Participant** means an employee or former employee of an Employer who has an account balance under the Plan.
- 1.12 **Plan** means the plan identified on the Trust Specifications Schedule.

- 1.13 **Plan Administrator** means the entity or person the Employer appoints to serve as Plan Administrator of the Plan. Unless the Employer notifies the Trustee in writing of the appointment of a Plan Administrator, the Employer shall be the Plan Administrator.
- 1.14 **Recordkeeper** means the Plan's duly appointed recordkeeper and any of its agents or assigns, including processing agents.
- 1.15 **Sub-Custodian** means the entity named on the Trust Specifications Schedule, if applicable, which serves as sub-custodian to Reliance Trust Company. If no entity is named on the Trust Specifications Schedule to serve as sub-custodian, then Reliance Trust Company will perform the custodial functions designated within this Agreement for the trust.
- 1.16 **Trust** means the trust established by this Agreement.
- 1.17 **Trust Assets** means the total amount of cash and other property held from time to time under this Agreement.
- 1.18 **Trust Specifications Schedule** means a schedule, as amended from time to time, which is part of this Agreement and which contains all customized terms and amended parts to this Agreement.
- 1.19 **Trustee** means Reliance Trust Company.



## ARTICLE 2 ESTABLISHMENT OF THE TRUST

- 2.1 **Trust Established.** The Employer has established with the Trustee, as a funding medium for the Plan, a Trust consisting of the Trust Assets and such earnings, profits, increments, additions and appreciation thereto and thereon as may accrue from time to time.
- 2.2 **Limit of Employer's Interests.**
- (a) **No Right to Reversion.** Except as provided in subsection (b) hereof and except as provided the Code, the Employers shall not have any right, title, interest, claim or demand whatsoever in or to the funds held by the Trustee, other than the right to a proper application thereof and accounting therefore by the Trustee as provided herein, nor shall any funds revert to the Employer, except as permitted by the Code.
  - (b) **Return of Contributions.** Any other provisions of this Agreement or the Plan notwithstanding, if and to the extent permitted by the Code and other applicable laws and regulations thereunder, upon the Employer's request, a contribution made by a mistake in fact, shall be returned to the specified Employer within one year after the mistaken payment of the contribution.
- 2.3 **Trustee's Conditional Acceptance.** The Trustee accepts the Trust hereby created and agrees to perform the duties required of the Trustee, subject, however, to the following conditions:
- (a) **Directed Trustee.** The parties expressly acknowledge and agree that the Trustee is a directed trustee. In the management and control of the Trust Assets, the Trustee shall be subject to the direction of the Employer, Plan Administrator, Participants, Beneficiaries or Alternate Payees in the Plan and, to the extent applicable under the terms of this Agreement, the directions of Investment Managers. The Trustee shall not make any investment review of, consider the propriety of holding or selling, or vote any assets held in the Trust except as directed by the Plan Administrator, Investment Manager, Employer, Participants, Beneficiaries, Alternate Payees or Employer. The Trustee shall have no responsibility to review or make recommendations regarding investments made at the direction of the Employer, Plan Administrator, Participants, Beneficiaries, Alternate Payees or an Investment Manager. The Employer, Plan Administrator, Investment Manager, Participants, Beneficiaries, and Alternate Payees shall not issue any directions to the Trustee that are in violation of the terms of the Plan or this Agreement. The Participants, Beneficiaries and Alternate Payees may exercise direction to the Trustee only through the Recordkeeper, provided that if the Plan permits a Participant, Beneficiary or Alternate Payee to direct investments through a self-directed Brokerage Account, each such self-directed Brokerage Account shall be opened in the name of the Trustee with a Broker for the benefit of each affected Participant, Beneficiary or Alternate Payee. The Trustee shall have and exercise authority and control over such Brokerage Account, subject always to the terms of the Plan and to authorized directions from the Plan Administrator, Investment

Manager, Participant, Beneficiary, Alternate Payee or Employer. Subject to the foregoing, the parties agree that Participants, Beneficiaries or Alternate Payees may relay trading instructions directly to the Broker.

- (b) **Compensation.** The Trustee shall be entitled to compensation for its services under this Agreement at such rates as from time to time the Trustee and the Recordkeeper shall agree in writing.

The Trustee has directed the Recordkeeper to retain any float earnings, as described below, as additional compensation for services the Recordkeeper renders.

Recordkeeper's procedure for processing Plan contributions provides for prompt investment of monies according to contract obligations. When a contribution is received in good order before the cut-off time (normally 4:00 p.m. Eastern Time) on a business day, contributions are valued at the Investment Fund's net asset value or unit value (depending on the form of the Investment Fund) as of the end of that business day. A contribution is received in "good order" when a contribution is accompanied by usable and complete data, and available monies equal to the total amount shown in the data. For purposes of this section, "business day" is defined as each day that the New York Stock Exchange is open for business.

It is Recordkeeper's goal to minimize the generation of float earnings by handling transactions as soon as possible in accordance with contract obligations. Notwithstanding this policy, amounts held pending investment may generate float earnings. Float may arise in connection with various deposits such as contributions, loan repayments and expense payments ("contributions"), including monies received by wire or electronic funds transfer ("EFT"). Float is generally not earned on contributions processed via check, unless the monies are available immediately. When a contribution is received, monies are invested in overnight investments pending execution of investment directions. Monies may be invested in the following types of overnight investments: (1) institutional money market account, which earns institutional money market rates; (2) passive overnight bank sweep, which is credited with overnight bank deposit rates; or (3) corporate checking account, which is credited at a rate that is set by the bank, currently 90% of the 3-month average of the 13-week Treasury-bill rates. When monies are withdrawn at the start of the following business day in order to be invested according to investment instructions, Recordkeeper retains the float, or interest, as part of its compensation. Contributions made by wire that are not in good order may earn additional float until good order is obtained.

It is the policy of Recordkeeper to process distributions and the corresponding withdrawals from investment funds as soon as possible. Notwithstanding this policy, float may arise in connection with distributions, including those that are made by check or by EFT. There is generally no float generated in connection with distributions made by wire transfer. Recordkeeper issues a distribution and directs the providers of Plan investment options to transfer the monies to

Recordkeeper in an amount sufficient to satisfy the distribution request. On the date that the distribution is issued, the monies are withdrawn from the Investment Funds and are invested in one of the following types of overnight investments: (1) institutional money market account, which earns institutional money market rates; (2) passive overnight bank sweep, which is credited with overnight bank deposit rates; or (3) corporate checking account, which is credited at a rate that is set by the bank, currently 90% of the 3-month average of the 13 week Treasury-bill rates. Recordkeeper accrues any float that is earned on the monies from the time the distribution is issued until such time as the distribution is deposited or cashed as part of its compensation. Generally, in the case of a distribution issued by check, if the check is not deposited or cashed after six months, the monies are returned to the Plan as abandoned property.

- 2.4 **Standard of Care** This Trust shall be administered by the Trustee solely in the interest of and for the exclusive purpose of providing benefits to Participants, Beneficiaries and their successors in interest and shall be administered in accordance with the provisions of the Plan and this Agreement. The Trustee shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Trustee shall not be responsible for the title, validity or genuineness of any property or evidence of title thereto received by it or delivered by it pursuant to this Agreement and shall be held harmless in acting upon any notice, request, direction, instruction, consent, certification or other instrument believed by it to be genuine and delivered by the proper party or parties.

### ARTICLE 3 DUTIES OF TRUSTEE

- 3.1 **Duties.** The following shall be the duties of the Trustee hereunder, provided the Trustee may delegate any or all of such duties to a third-party, including the Sub-Custodian and Recordkeeper, as set forth below:
- (a) **Receipt of Contributions.** To receive any contributions paid to it under this Agreement in cash or in other property acceptable to the Trustee. The Trustee shall be responsible only for property actually received by it pursuant to this Agreement. The Trustee has delegated this duty to the Sub-Custodian.
  - (b) **Administration of Trust Assets.** In accordance with directions received (either directly or indirectly) under the terms of this Agreement, to hold, invest and reinvest (except as otherwise provided herein) all contributions so received, together with the income therefrom and any other increment thereon, for the exclusive benefit of Participants, Alternate Payees and their Beneficiaries in accordance with the terms of this Agreement. The Trustee has delegated this duty to the Sub-Custodian.
  - (c) **Payments.** The Plan Administrator, Participants, Beneficiaries or Alternate Payees will direct that payments be made under the Plan and the Trustee delegates the duty to accept these directions to the Recordkeeper. The Trustee shall be fully protected in relying upon the directions received from the Recordkeeper. In the absence of negligence or willful misconduct on the part of the Trustee or the Recordkeeper, the Plan Administrator hereby indemnifies Trustee from any loss, claim, damage or liability, including legal expenses, that may arise in connection with Trustee's acting upon such direction. The Plan Administrator shall provide Effective Communication to Trustee to revoke such delegation to Recordkeeper. Notwithstanding the foregoing delegation of authority, the Plan Administrator retains the right to separately direct the Trustee with respect to any payment from the Trust Assets, and Trustee shall be fully protected in relying upon such directions.
  - (d) **Records.** To keep such accounts and records and make such reports and disclosures as shall be required under this Agreement. The Trustee has delegated this duty to the Recordkeeper.
  - (e) **Authorized Acts.** To take any action directed by the Employer, Plan Administrator, Recordkeeper, or the authorized designee of any of them. The Trustee may rely on any such direction without question and shall not be liable for any failure to act pending receipt of any such direction.
  - (f) **Acceptance of Rollovers.** At the direction of the Plan Administrator, to accept a contribution of cash distributed or distributable to a Participant from another §457(b) employee benefit plan, or from an individual retirement account or annuity described in Code §408, or from 403(b) and 401(a) retirement plans. The Plan Administrator shall be solely responsible for determining that any such contribution represents an

eligible rollover contribution within the meaning of Code §402(c)(4) or Code §408(d)(3)(A)(ii). The Trustee has delegated this duty to the Sub-Custodian.

## **ARTICLE 4**

### **INVESTMENT OF TRUST ASSETS**

#### **4.1 General Investment Power/Investment Funds.**

- (a) **Authority of Employer.** Except as provided in Sections 4.2 and 4.3, the Employer shall have all authority and responsibility for the management, disposition and investment of the Trust Assets, and the Trustee shall comply with directions of the Employer. The Employer shall not issue any directions that are in violation of the terms of the Plan or this Agreement.
- (b) **Investment Funds.** The Trust shall be divided into one or more separate Investment Funds, the number, makeup and description of which shall be determined from time to time by the Employer. The Trustee shall implement, terminate, value, transfer to and from and allocate the gains, losses and expenses among the Investment Funds in accordance with the proper directions of the Employer, Plan Administrator, Recordkeeper, or their delegates, and, to the extent applicable under the terms of this Agreement, the directions of Investment Managers.
- (c) **Funding Policy.** The Employer is responsible for establishing and carrying out a funding policy consistent with the objectives of the Plan. The Trustee will rely on the Employer for direction with respect to the proper diversification of the Trust Assets and for the prudence of any investment of Trust assets.

#### **4.2 Participant Direction of Investments.** To the extent provided for under the Plan, each Participant, Beneficiary, and Alternate Payee shall have investment authority over his or her account and may direct the investment and reinvestment of assets among the Investment Funds. The Plan Administrator or its designee (which may be the Recordkeeper) shall communicate such directions to the Trustee under procedures established by the Trustee and the Plan Administrator, and the Trustee shall follow and carry out such directions. If a Participant, Beneficiary, or Alternate Payee who has investment authority under the terms of the Plan fails to provide such directions, the Trustee shall invest the Participant's, Beneficiary's or Alternate Payee's account among the Investment Funds in accordance with the directions of the Employer, as maintained by the Recordkeeper. The Trustee shall not be liable for any loss that results from a Participant's, Beneficiary's or Alternate Payee's exercise of investment control.

#### 4.3 **Investment Managers.**

- (a) **Appointment.** The Employer may, but shall not be required to, appoint one or more Investment Managers to manage the assets of all or any one or more of the Investment Funds.
- (b) **Contractual Arrangement.** The Employer shall enter into a written contract or agreement with each such Investment Manager in connection with its appointment as such, and such contract shall be subject to such terms and conditions and shall grant to the Investment Manager such authority and responsibilities in the management of the applicable Investment Fund assets as the Employer deems appropriate under the circumstances. Without limiting the generality of the foregoing, such contract may establish investment objectives for the assets of the Investment Fund(s) under the management of the Investment Manager and may limit the types of assets that may be acquired or held by such Investment Fund(s).
- (c) **Trustee's Duties.** With respect to each Investment Fund the management of which has been delegated to an Investment Manager, the Trustee shall follow and carry out the instructions of the appointed Investment Manager with respect to the acquisition, disposition and reinvestment of assets of such Investment Fund, including instructions relating to the exercise of all ownership rights in such assets, and the Trustee shall not be under any obligation to invest or otherwise manage any assets allocated to such Investment Fund.
- (d) **Failure to Direct.** In the event that an appointed Investment Manager shall fail to direct the Trustee with respect to investment of all or any portion of the cash held in an Investment Fund under its management, the Trustee shall invest such cash in accordance with the directions of the Employer, as maintained by the Recordkeeper.
- (e) **Termination of Appointment.** Upon the termination of the appointment of an Investment Manager, the Employer shall (i) appoint a successor Investment Manager with respect to the Investment Fund(s) formerly under the management of the terminated Investment Manager, (ii) direct the Trustee to merge or combine such Investment Fund(s) with other Investment Fund(s) or Trust Assets, or (iii) direct the Trustee to invest the assets of such Investment Fund as the Employer deems appropriate in accordance with the existing funding policy.

#### 4.4 **Manner and Effect of Directions.**

- (a) **Delegation of Authority.** The Trustee, who is authorized and directed to serve as the custodian with the authority and responsibility for receiving and carrying out the directions of the Participants, Beneficiaries, Alternate Payees, Employer, Plan Administrator, or their designees, has delegated such custodial duties to the Sub-Custodian. With respect to any assets held by a party other than Trustee, the Trustee is authorized and directed to delegate to a custodian the authority and responsibility for receiving and carrying out the directions of the Participants, Beneficiaries, Alternate Payees, Employer, Plan Administrator, or their designees. The Trustee is authorized and directed to enter into such agreements with another

custodian as are deemed necessary or appropriate to effect such delegation. The Employer represents that all directions given by it in any capacity under this Agreement, whether to the Trustee or the custodian, shall comply with the terms of the Plan, this Agreement, and applicable law.

- (b) **Manner of Direction.** Any direction, request or approval of the Employer, Participants, Beneficiaries, Alternate Payees, Plan Administrator, or any other party to whom authority to give such directions, requests or approvals is delegated under the powers conferred under this Agreement (including, without limitation, the Recordkeeper and its designees) shall be provided to the Trustee or the Sub-Custodian in writing, by automated telephone response system, electronic data transmission (including internet communications) or such other means of Effective Communication as is acceptable to the Trustee or the Sub-Custodian, as applicable.
- (c) **Liability for Authorized Acts.** Except in the event of its own negligence or willful misconduct, the Trustee shall incur no liability to anyone for any action that it or the Sub-Custodian as its delegate takes pursuant to a direction, request or approval given by the Employer, Participants, Beneficiaries, Alternate Payees, Plan Administrator or by any other party (including, without limitation, the Recordkeeper and any of its agents) to whom authority to give such directions, requests or approvals is delegated under the powers conferred upon the Employer, Participants, Beneficiaries, Alternate Payees, Plan Administrator or such other party under this Agreement.

- 4.5 **Authorization of Designee(s).** The Plan Administrator and the Employer may each appoint one or more designees to act on their behalf. If a designee (or designees) is appointed, the Plan Administrator or the Employer shall furnish the Trustee with Effective Communication of the appointment and a specimen signature of each designee. The Trustee shall be entitled to rely upon such documentation until the Trustee receives Effective Communication to the contrary.



## **ARTICLE 5 POWERS OF TRUSTEE**

- 5.1 **General Authority.** In accordance with the directions of the Employer, Participants, Beneficiaries and Alternate Payees, and any Investment Managers as provided in Article 4, the Trustee shall receive, hold, manage, convert, sell, exchange, invest, reinvest, disburse and otherwise deal with the assets of the Trust, including contributions to the Trust and the income and profits therefrom, without distinction between principal and income and in the manner and for the uses and purposes set forth in the Plan and as hereinafter, described, provided that the Trustee is authorized to delegate to the Recordkeeper certain of the specific powers listed below.
- 5.2 **Specific Powers.** In the management of the Trust, the Trustee shall have the following powers in addition to the powers customarily vested in trustees by law and in no way in derogation thereof; provided, all such powers shall be exercised only upon and in accordance with the directions of the Participants, Beneficiaries, Alternate Payees, Employer, Plan Administrator and, to the extent applicable, any duly appointed Investment Managers:
- (a) **Purchase of Property.** With any cash at any time held by it, to purchase or subscribe for any authorized investment (as defined in Section 5.3) and to retain the same in trust;
  - (b) **Disposition of Property.** To sell, exchange, transfer or otherwise dispose of any property at any time held by it;
  - (c) **Retention of Cash.** To hold cash without interest in administrative accounts for contribution and distribution processing in such amounts as may be reasonable and necessary for the proper operation of the Plan and the Trust;
  - (d) **Exercise of Owner's Rights.** The Employer acknowledges and agrees that the Trustee shall not have the right or power to vote proxies appurtenant to securities that the Trustee holds except as directed by the Employer, Plan Administrator, Participants, Beneficiaries or Alternate Payees, acknowledges and agrees that Trustee shall not make any review of, or consider the propriety of, holding or selling any assets held as Trust Assets in response to any tender offer, conversion privilege, rights offering, merger, exchange, public offering and/or any proxy action for any of such assets and agrees not to issue any directions to the Trustee relating to any corporate event, proxy votes or holding or selling assets held as Trust Assets that are contrary to or in violation of the terms of the Plan document or this Agreement or that are prohibited by the Internal Revenue Code of 1986.
  - (e) **Registration of Investments.** To cause any stock, bond, other security or other property held as part of the Trust to be registered in its own name or in the name of one or more of its nominees; provided, the books and records of the Trustee shall at all times show that all such investments are part of the Trust;

- (f) **Qualified Pooled Investments.** To transfer, at any time and from time to time, all or any part of the Trust Assets to, or withdraw the same from, any pooled Investment Fund or group or collective trust, invested in similar types of securities or other investments, maintained by a bank or trust company (including, if applicable, the Trustee) supervised by a state or federal agency, which has been determined by the Internal Revenue Service to be a qualified trust or fund exempt from federal income tax under Code §501(a) and which has been established to permit separate trusts qualified under Code §457(g)(1) to pool some or all of their funds for investment purposes; to the extent the Trust Assets are invested in such a pooled fund or group or collective trust, the terms of the instrument establishing such pooled fund or group or collective trust are made a part of this Agreement as fully as if set forth at length herein; the commingling of assets of this Trust with assets of other qualified participating trusts in such pooled funds or group or collective trusts is specifically authorized;
- (g) **Purchase of Contracts.** To apply for, purchase, hold, transfer, surrender and exercise all incidents of ownership of any life insurance or annuity contract (but not a contract for a life annuity unless the Plan provides for the distribution of benefits in such form) which the Employer directs it to purchase;
- (h) **Execution of Instruments.** To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments, which may be necessary or appropriate to carry out the powers herein granted;
- (i) **Settlement of Claims and Debts.** With County's to settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend suits or legal or administrative proceedings and to represent the Trust in all suits and legal and administrative proceedings;
- (j) **Employment of Agents, Advisers and Counsel.** To employ suitable agents, actuaries, accountants, investment advisers, brokers, sub-custodians and counsel, and to pay their reasonable expenses and compensation. Counsel may be counsel to the Employer, and such counsel's advice may be sought on any legal matter including the interpretation of this Agreement and the Plan. The Trustee shall be fully protected in acting on advice of counsel to the Employer, if such counsel is acting on behalf of the Employer; and
- (k) **Power to do any Necessary Act.** To do all acts which it may deem necessary or proper and to exercise any and all powers of the Trustee under the Plan and this Agreement upon such terms and conditions as it may deem in the best interests of the Trust.

### 5.3 **Authorized Investments.**

- (a) **General Definition.** "Authorized investment" as used in this Article V shall mean bonds, debentures, notes or other evidences of indebtedness; stocks (regardless of class) or other evidences of ownership, in any corporation, mutual investment fund, investment company, association or business trust; annuity contracts (other than life

annuity contracts); guaranteed income contracts; and savings accounts and certificates and interest-bearing deposits in any depository institution (including the Trustee or any affiliate of the Trustee). "Authorized investments" shall not be limited to that class of investments which are defined as legal investments for Trust Assets under the laws of the state in which the Employer has its principal place of business or of any other jurisdiction.

- (b) **Responsibility for Compliance.** The responsibility for determining whether any investment of Trust Assets complies with the terms of this Agreement and applicable law shall lie solely with the Employer, and the Trustee shall have no responsibility to ascertain whether any investment made at the direction of the Employer or other authorized person complies with the terms of this Agreement or applicable law. The Trustee's entering into this Agreement will not be deemed to be a determination that the investment of Trust Assets complies with the terms of this Agreement.

- 5.4 **Participant Loans.** If provided for by the Plan, loans to Participants shall be granted and administered by the Plan Administrator, provided that the Plan Administrator may delegate some or all responsibility for granting and administering loans to the Recordkeeper. The Trustee shall distribute cash to Participants who are granted loans in such amounts and at such times as directed by the Plan Administrator or the Recordkeeper. The Trustee hereby designates the Plan Administrator and/or the Recordkeeper as the physical custodian of the promissory notes, responsible for the safekeeping of the promissory notes and other related documents. The Trustee has no responsibility to ascertain whether a loan complies with the provisions of the Plan or applicable law, for the decision of the Plan Administrator or Recordkeeper to grant a loan, or for the collection and repayment of a loan.

## ARTICLE 6 ADMINISTRATION

### 6.1 Accounting by Trustee.

- (a) **Books and Records.** The Recordkeeper generally shall be responsible for keeping accurate and detailed records of all investments, receipts and disbursements and other transactions hereunder, including such specific records as may be agreed upon in writing between the Plan Administrator, Employer, Recordkeeper and Trustee. All books and records relating thereto shall be open to inspection and audit, with reasonable advance notice, at all reasonable times during Recordkeeper's normal business hours by any person or persons designated by the Plan Administrator, or Employer. The Trustee shall promptly provide copies of such books or records to any persons designated by the Plan Administrator. Any inspection shall be subject to all applicable rules of privilege and confidentiality, thereby excluding any non-relevant material that is privileged, confidential, proprietary, or subject to third party privacy interests or rights. Any relevant privileged or confidential information produced or disclosed in an inspection shall be subject to the confidentiality and use restrictions set forth herein.
- (b) **Accounting.** Following the close of each Plan year of the Plan, or more frequently as the Trustee and the Plan Administrator may agree, and after the effective date of the removal or resignation of the Trustee, the Recordkeeper, on behalf of the Trustee, will make available to the Plan Administrator and the Employer (and/or their authorized designees) electronic records setting forth all transactions, including but not limited to investments, receipts, and disbursements effected by it during such year or during the period beginning as of the close of the last preceding year to the date of such removal or resignation. These electronic records will be made available in a timely manner to permit the preparation of Participant statements or to provide for the orderly replacement of the Trustee, as the case may be. Except as may be required by statute or by regulations published by federal government agencies with respect to reporting and disclosure, as may be required pursuant to the terms of the Plan or this Agreement or as reasonably may be requested by the Plan Administrator, Employer or Employer, no person shall have the right to demand or to be entitled to any further or different accounting by the Trustee.
- (c) **Release.** The Trustee shall forever be released and discharged from any liability or accountability to anyone with respect to the propriety of its acts or transactions shown in such annual accounting as of the deadline, with extension, for the Employer's filing of any report filed with a governmental entity, with respect to such period for which the report is filed or, if the Employer is not subject to any such filing requirement, 120 days from the date the electronic records are made available except with respect to any acts or transactions as to which the Plan Administrator or Employer, within such 120-day period, files with the Trustee Effective Communication of disapproval or objection. In the event such Effective Communication of disapproval is filed, and unless the matter is compromised by

agreement between the Trustee and the Plan Administrator or the Employer, the Trustee shall file its statement covering the period from the date of the last annual statement to which no objection was made in any court of competent jurisdiction for audit or adjudication.

- (d) **Valuations.** The Trustee shall deliver to the Plan Administrator and the Employer (and their authorized designees) such information as may be required or requested to permit the Trust Assets to be valued at such other times as the Plan Administrator or Employer shall deem appropriate. Employer shall designate a party, other than Trustee, to be responsible for valuations of assets held by a custodian other than Trustee or Sub-Custodian and any assets held by the Plan for which prices are not readily available on a nationally recognized securities exchange.
- (e) **Reliance on Recordkeeper.** The Trustee shall be entitled to rely on the Recordkeeper and any custodian, other than Trustee or Sub-Custodian, for the maintenance and provision of all records (including participant loan records) specified in this Section 6.1.

6.2 **Expenses.** The expenses incurred by the Trustee in the performance of its duties hereunder, including:

- (a) fees for legal services rendered to the Trustee;
- (b) compensation of the Trustee; and
- (c) all other proper charges and disbursements of the Trustee, including all personal property taxes, income taxes and other taxes of any and all kinds whatsoever, that may be levied or assessed under existing or future laws upon or in respect of the Trust or any money, property or security forming a part of the Trust Assets;

shall be paid by the Trustee from the Trust Assets, and the same shall constitute a charge upon the Trust Assets, unless the Trustee receives payment of the same or any part thereof from the Employer or otherwise.

To the extent an Employer pays any expenses that are properly payable from the Trust Assets, the Trustee shall reimburse the Employer from the Trust Assets if requested to do so by the Employer.

## **ARTICLE 7**

### **REMOVAL AND RESIGNATION OF TRUSTEE; SUCCESSOR TRUSTEE**

- 7.1 **Removal and Resignation.** The Employer may remove the Trustee at any time upon 60 calendar days Effective Communication delivered to the Trustee. The Trustee may resign at any time upon 60 calendar days Effective Communication delivered to the Employer. In either case, the notice period may be reduced to such shorter period as the Trustee and the Employer agree upon. The Trustee's removal or resignation will be effective upon the last day of the notice period or, if later, the acceptance of the Trust by the successor Trustee. Until the effective date of the appointment of a successor Trustee (or the termination of the Trust and complete distribution of its assets), the incumbent Trustee will have full authority and responsibility to act as Trustee hereunder.
- 7.2 **Final Accounting.** In any such case, the Employer shall notify the Trustee of the appointment of a successor trustee, and the Trustee shall convey and deliver to such successor trustee all of the Trust Assets. Within 90 calendar days after any such removal or resignation of the Trustee, the Trustee shall make a final accounting to the Employer, Plan Administrator and as of the effective date of such removal or resignation pursuant to the terms of Section 6.1.

## **ARTICLE 8**

### **AMENDMENT OF TRUST; TERMINATION OF PLAN**

**8.1     Amendment of Trust.**

- (a)     **Right to Amend.** The Employer and the Trustee may by written agreement amend this Agreement at any time or from time to time, and any such amendment by its terms may be retroactive. All such amendments will be included in the Trust Specifications Schedule.
  
- (b)     **Exclusive Benefit.** Notwithstanding the foregoing, no amendment shall be made which would authorize or permit any Trust Assets, other than such assets as are required to pay taxes and administration expenses, to be used for or diverted to purposes other than the exclusive benefit of Participants, Beneficiaries or Alternate Payees, except that this Agreement may be amended retroactively and to affect the benefits of Participants, Beneficiaries or Alternate Payees if necessary to cause the Plan and Trust to be or remain exempt from income taxes under the Code.

**8.2     Termination of Plan.** In the event of termination of the Plan, the Trustee shall continue to hold the Trust, to be applied and distributed in accordance with the terms of the Plan.

## ARTICLE 9 MISCELLANEOUS

- 9.1 **Nonalienation of Benefits.** Except as provided under the provisions of the Plan relating to loans to Participants and to qualified domestic relations orders and to the extent permitted by law, neither the benefits payable from the Trust Assets nor any interest in any of the assets of the Trust Assets shall be subject in any manner to the claim of any creditor of a Participant, Beneficiary or Alternate Payee or to any legal process by any creditor of such Participant, Beneficiary or Alternate Payee; and neither a Participant nor any Beneficiary or Alternate Payee shall have any right to alienate, commute, anticipate or assign any right to benefits payable from or any interest in the Trust, except as provided in the Plan.
- 9.2 **Exclusive Benefit.** Except as otherwise provided in the Plan and this Agreement, no part of the Trust hereunder shall be used for or diverted to any purpose other than for the exclusive benefit of Participants, Beneficiaries or Alternate Payees or the payment of expenses as herein provided.
- 9.3 **Effect of Plan.** The Trustee is not a party to the Plan, and in no event shall the terms of the Plan, either expressly or by implication, be deemed to impose upon the Trustee any power or responsibility other than as set forth in this Agreement. In the event of any conflict between the provisions of the Plan and this Agreement, this Agreement shall be deemed to be incorporated into and be a part of the Plan. The Trustee shall not be a fiduciary under the Plan and shall not have the authority to interpret the Plan.
- 9.4 **Entire Agreement.** This Trust Agreement along with the Trust Specifications Schedule constitute the entire Agreement between the parties hereto with regard to the subject matter hereof, and there are no other agreements or understandings between the parties relating to the subject matter hereof other than those set forth or provided for herein.
- 9.5 **Approval of the Employer.** The Employer and Plan Administrator shall have the right, on behalf of all individuals at any time having any interest in the Trust, to approve any action taken or omitted by the Trustee.
- 9.6 **Notices.** Effective Communication may be made to the parties at the addresses listed in the Trust Specifications Schedule or to such other addresses as may be agreed upon by the parties.
- 9.7 **Liability for Predecessor or Successor.** No successor trustee hereunder in any way will be liable or responsible for any actions or omissions of any prior trustee in the administration of the Trust or the assets comprising the Trust prior to the date such successor trustee assumes its obligations hereunder, nor will any prior trustee in any way be liable or responsible for any actions or omissions of any successor trustee.
- 9.8 **Liability for Acts of Others.** The Trustee shall not be liable for the acts or omissions of the Employer, Recordkeeper, Plan Administrator, Investment Manager, Participants, Beneficiaries, Alternate Payees or any custodian (other than Sub-Custodian, provided that such liability will be limited to liability arising from those duties and responsibilities



delegated to Sub-Custodian under the services agreement between Trustee and Sub-Custodian), except with respect to any acts or omissions of any such party in which the Trustee participates knowingly or which the Trustee knowingly undertakes to conceal, and which the Trustee knows constitutes a breach of fiduciary responsibility of such party.

- 9.9 **Indemnification.** In the event that the Trustee incurs any liability, loss, claim, suit or expense (including without limitation attorneys' fees) in connection with or arising out of its provision of services under this Agreement or its status as Trustee hereunder, then the Employer shall indemnify and hold the Trustee harmless from and against such liability, loss, claim, suit or expense, except to the extent such liability, loss, claim, suit or expense arises directly from a breach by the Trustee of responsibilities specifically allocated to it by the terms of the Agreement. In the event that the Employer and or Plan Administrator incurs any liability, loss, claim, suit or expense in connection with or arising out of its provision of services under this Agreement, the Trustee shall hold the Employer and Plan Administrator harmless against any loss, claim, suit or expense (including without limitation attorneys' fees) incurred as a result of the Trustee's negligence or a breach by the Trustee of any service covered by this Agreement. The indemnification provided by this Section shall survive the termination of this Agreement.
- 9.10 **Controlling Law.** This Agreement shall be construed according to the laws of the State of Georgia, except to the extent superseded by any federal law.
- 9.11 **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Employer and the Trustee have caused this Agreement to be signed by their duly authorized officers or representatives as of the day first written above.

**EMPLOYER**

County of Napa

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**TRUSTEE**

RELIANCE TRUST COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NAPA COUNTY, a political subdivision of  
the State of California

\_\_\_\_\_  
BRAD WAGENKNECHT, Chair of  
the Board of Supervisors

APPROVED AS TO FORM  
Office of County Counsel

By: \_\_\_\_\_

County Counsel

Date: \_\_\_\_\_

APPROVED BY THE NAPA COUNTY  
BOARD OF SUPERVISORS

Date: \_\_\_\_\_

Processed By: \_\_\_\_\_

\_\_\_\_\_  
Deputy Clerk of the Board

ATTEST:

Clerk of the Board of Supervisors

By: \_\_\_\_\_

**TRUST SPECIFICATIONS SCHEDULE**

I. The Trust Agreement is amended as follows:

**Amendments to Article 1:**

1.6 **Effective Communication**

If to the Employer:

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If to the Plan Administrator:

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If to the Trustee:

Reliance Trust Company  
1100 Abernathy Road, N.E. Suite 400  
Atlanta, Georgia 30328-5634  
Attn: Manager, Retirement Strategies Group

1.7 **Effective Date** means February 15, 2018.

1.8 **Employer** means County of Napa and its successors that adopt the Plan.

1.12 **Plan** means County of Napa 457 Deferred Compensation Plan and County of Napa 457 Part-time, Extra Help, Seasonal and Temporary Deferred Compensation Plan, as such Plan may be amended from time to time.

1.14 **Recordkeeper** means Massachusetts Mutual Life Insurance Company, the Plan's duly appointed recordkeeper and any of their respective agents or assigns, including processing agents.

1.15 **Sub-Custodian** means State Street Bank and Trust Company.

*The amendments to Article 1 are effective as of February 15, 2018.*

## **RELIANCE TRUST COMPANY ERISA 408(b)(2) Fee Disclosure**

This document is being provided pursuant to new regulations adopted by the Department of Labor ("DOL") requiring certain service providers to employee benefit plans that are subject to Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to provide certain disclosures to their plan customers.

### **About ERISA 408(b)(2)**

The new regulation is issued under section 408(b)(2) of ERISA and requires service providers that reasonably expect to receive \$1,000 or more in compensation, directly or indirectly, to disclose information to assist plan fiduciaries in assessing the reasonableness of the service providers' compensation and potential conflicts of interest that may affect the service providers' performance.

### **About Reliance Trust Company**

Reliance Trust Company ("RTC"), headquartered in Atlanta was founded in 1975 and organized as a bank and trust company in 1981. RTC provides a full array of financial products and services to plan fiduciaries, recordkeeping and third party administrators of retirement plans. Services include: trustee and custodial recordkeeping, fiduciary services, investment and cash management, trade clearing and settlement services.

### **Plan Fiduciary Notification**

RTC is a covered service provider as defined by the ERISA section 408(b)(2) regulation for your employee benefit retirement plan in the capacity of providing directed trustee services under the trust agreement your business has executed with RTC.

As a directed trustee, RTC is a fiduciary to the plan and responsible for the proper execution of directions, safekeeping of plan assets and providing periodic trust reporting subject to the direction of the plan's named fiduciary, plan administrator and/or investment manager.

Massachusetts Mutual Life Insurance Company ("MassMutual") and RTC have entered into an agreement pursuant to which RTC provides directed trustee services for plans that are serviced by MassMutual, and MassMutual provides administration services to RTC, and, where appropriate acts as RTC's agent for directed trustee administration functions and responsibilities assumed by RTC with respect to the plan. MassMutual and RTC are not affiliated. The responsibilities and services provided by MassMutual are intended to be ministerial in nature and MassMutual does not serve in a fiduciary capacity with respect to the plan in this context.

RTC enters into a separate agreement with the sponsor of each plan for which RTC provides services. RTC's fees for its services are paid by MassMutual to RTC out of revenue that MassMutual receives from its plan clients. The fees for RTC services vary based on the type of plan serviced by RTC. The fee received by RTC for services provided to plans with no employer securities is \$400 per year per plan and the fee received by RTC services for plans with employer securities is \$5,000 per year per plan. The fees received by RTC are considered indirect compensation because they are paid to RTC out of MassMutual's revenue. For calendar year 2017, RTC has agreed to reduce the fees billed to MassMutual that are disclosed herein by 2%. This will have no impact on a plan sponsor's fee or expense arrangement with MassMutual.