

TITLE 2. ADMINISTRATION AND GOVERNMENT SERVICES

Chapter 2.4

TRIBAL COUNCIL DEFERRED COMPENSATION PLAN

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2.4.1. Purpose. The full-time Tribal Council members provide important public service to the Tribe and dedicate extensive time to their Tribal Council duties, without being able to earn retirement benefits for their service.* The purpose of the ordinance codified in this chapter is to adopt a deferred compensation plan which will provide the full-time Tribal Council members with retirement benefits designed to replicate to the extent legally possible the retirement benefits available to full-time employees of the Tribe under both the Tribe's tax-qualified retirement plan and the Social Security system. The deferred compensation plan established hereunder shall be designed to allow full-time Tribal Council members to defer compensation and to receive certain retirement-type contributions from the Tribe on a tax-deferred basis.

The Plan is intended to constitute a governmental plan as defined under Section 3(32) of the Employee Retirement Income Security Act of 1974 (PL 93-406; ERISA or the "Act"). The Plan is further intended to constitute a nonqualified plan of deferred compensation which is unfunded and maintained by the Tribe primarily for the purpose

* Pursuant to the Internal Revenue Service's Revenue Ruling 59-354, 1959-2 CB 24, and 26 USC 7701(a)(26), the members of the Suquamish Tribal Council are elected officials of the Tribe and are not common law employees of the Tribe. Elected officials of tribal governments are not eligible for participation in the federal government's Social Security system with regard to the compensation earned as Tribal Council members. Accordingly, the Tribe has been directed by the IRS to stop making Federal Insurance Contributions Act (FICA) and Medicare tax deposits on behalf of Tribal Council members. Additionally, Tribal Council members are not permitted to participate in the tax-qualified retirement program sponsored by the Tribe, because they are not employees of the Tribe.

of providing deferred compensation for a select group of management or highly compensated employees, exempt from the requirements of Parts 2 through 4 of Title I of the Act. The Plan includes those provisions necessary for compliance with Internal Revenue Code (26 USC; the "Code") Section 409(a). (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.2. Effective Date. The Tribe hereby establishes the "Suquamish Tribe Deferred Compensation Plan for Tribal Council Members" (the "Plan") and the related "Suquamish Tribe Deferred Compensation Plan for Tribal Council Members Irrevocable Trust Agreement" effective as of April 14, 2008. The term "Plan" as used herein refers to the deferred compensation plan established and described in the remaining text of this chapter. (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.3. Definitions. When a word or phrase shall appear in this Plan or in the trust agreement with the initial letter capitalized and the word or phrase does not commence a sentence, the word or phrase shall generally be a term defined in this section. The following words and phrases utilized in the Plan or in the trust agreement with the initial letter capitalized shall have the meanings set forth in this section unless a clearly different meaning is required by the context in which the word or phrase is used.

(a) "Act" or "ERISA" means the Employee Retirement Income Security Act of 1974 (PL 93-406), as it may be amended from time to time.

(b) "Authorized leave of absence" means a leave of absence granted in writing in accordance with the Tribe's uniformly applied rules regarding leaves of absence for Council members or a leave of absence for service as a member of the armed forces of the United States, provided that the participant left the Tribe directly to enter the armed services and returns to the service of the Tribe within the period during which his or her employment or service rights, as applicable, are protected by law.

(c) "Beneficiary" means the person or persons entitled to receive benefits under this Plan in the event of death of the participant.

(d) "Benefit" means the participant's accumulated account balances under the Plan, including investment earnings.

(e) "Benefit commencement date" means the first day on which all events, including the passing of the day on which benefit payments are scheduled to commence, have occurred which entitle the participant to receive his or her first benefit payment from the Plan.

(f) "Code" means the Internal Revenue Code of 1986, as amended (26 USC).

(g) "Compensation reduction agreement" means an agreement, which may be combined with or incorporated into a participation agreement, that (1) satisfies the requirements of §2.4.5(b)(2) and (2) must be entered into as a condition to receive compensation reduction contributions.

(h) "Compensation reduction contributions" means the pretax elective deferrals directed by participants pursuant to §2.4.6(a).

(i) "Council compensation" means the participant's taxable gross pay earned during a plan year and attributable to the performance of services as a full-time member of the Council. No Council member received compensation for full-time Council service prior to the 2005 calendar year.

(j) "Council" means the publicly elected Tribal Council of the Suquamish Tribe, a federally recognized tribal government.

(k) "Deferred compensation committee" or "committee" means the committee appointed to act as the administrator of the Plan pursuant to §2.4.13.

(l) "Distribution agent" means the individual or entity appointed by the Council to process distributions pursuant to §2.4.10 and §2.4.11. The terms of said appointment shall be set forth in a distribution agent agreement approved by the Council, the deferred compensation committee, and the trustee. In the absence of an appointment, the deferred compensation committee shall serve as the distribution agent.

(m) "Effective date." The general effective date of the Plan is April 14, 2008. An individual's participation in the Plan, however, shall not become effective until after a binding participation agreement is completed. All Plan provisions and operational requirements added by 26 USC 409(a) shall, notwithstanding anything herein to the contrary, be effective as of the 26 USC 409(a) required effective date(s).

(n) "Eligible Council member" means each person receiving remuneration or who is entitled to remuneration for full-time services rendered to the Tribe as an elected member of the Council.

(o) "Participant" means each eligible Council member who as of or after the effective date has satisfied the eligibility requirements specified in §2.4.5(a) and whose participation in the Plan has not been terminated. If so indicated by the context, the term participant shall also include former participants whose active participation in the Plan has terminated but who have not received all amounts to which they are entitled pursuant to the terms and provisions of this Plan. Whether former participants are allowed to exercise an option or election extended to "participants" will be determined by the deferred compensation committee in the exercise of its discretion.

(p) "Participation agreement" means an agreement entered into between the Tribe and a participant pursuant to §2.4.5(b), acknowledging an individual's participation in the Plan. All participants must enter into a participation agreement.

(q) "Plan" means the "Suquamish Tribe Deferred Compensation Plan for Tribal Council Members," as established pursuant to this chapter and as it may hereafter be amended.

(r) "Plan year" means a twelve-month period commencing on each January 1 and ending each following December 31.

(s) "Social Security replacement contributions" means the amounts contributed to the trust fund, if any, by the Tribe pursuant to §2.4.7(b).

(t) "Social Security refund payment" means the amounts payable to the initial plan participants or to the trustee by the Tribe, if any, pursuant to §2.4.7(c).

(u) "Termination date" means the date a participant is no longer serving the Tribe as a full-time elected member of the Council. A participant on an authorized leave of absence shall not be deemed to be terminated.

(v) "Tribal retirement contributions" means the amounts contributed to the trust fund, if any, by the Tribe pursuant to §2.4.7(a).

(w) "Trust agreement" means the "Suquamish Tribe Deferred Compensation Plan for Tribal Council Members Irrevocable Trust Agreement," entered into between the Tribe and the trustees with respect to the investment of contributions hereunder. Unless directed otherwise with regard to a specific provision or aspect of the Plan or trust, the trust agreement shall be administered at all times in conformance with all provisions required for favorable tax treatment under Revenue Procedure 92-64, 1992-2 CB 422.

(x) "Trust fund" or "trust" means the fund established by the Tribe pursuant to the terms of the trust agreement to provide for the investment of contributions made pursuant to this Plan.

(y) "Trustee" means the individual(s) or entity selected by the Tribe to serve as trustee in accordance with the terms and provisions of the trust agreement. The trustee shall acknowledge acceptance of its appointment by the execution of the trust agreement or, in the case of a successor trustee, by the execution of an appropriate written instrument.

(z) "Unforeseeable emergency" means a severe financial hardship to the participant resulting from an illness or accident of the participant, the participant's spouse, or a dependent, as defined in 26 USC 152(a), of the participant; loss of the participant's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The deferred compensation committee shall determine the existence of an unforeseeable emergency, in accordance with the Treasury Regulations promulgated under 26 USC 409(a).

(aa) "Valuation date" means the date for valuing the assets of the trust fund, which shall be the last business day of the plan year and such other dates as the

deferred compensation committee may designate. (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.4. Construction. (a) General. The masculine gender where appearing in the Plan shall include the feminine gender, and the singular shall include the plural, unless the context clearly indicates to the contrary. The term "delivered to the deferred compensation committee" or similar terms as used in the Plan or the trust agreement shall include delivery to a person or persons designated by the deferred compensation committee for the disbursement and receipt of administrative forms. Headings and subheadings are for the purpose of reference only and are not to be considered in the construction of this Plan. The Plan shall be construed in a manner consistent with the Tribe's intentions as set forth herein.

(b) Savings Provision. If any provision of the Plan is determined to be for any reason invalid or unenforceable, the remaining provisions shall continue in full force and effect.

(c) Governing Law; Sovereign Immunity. All of the provisions of the Plan shall be construed, enforced, and administered according to tribal law or, to the extent tribal law is preempted, federal law. It is the position of the Tribe that the Act does not apply to the Plan or to the Tribe with respect to those employees substantially all of whose services, as such an employee, are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function), as determined by the Tribe in accordance with the Tribe's reasonable and good faith interpretation of Section 906 of the Pension Protection Act of 2006 (PL 109-280). Nothing in this section or in any other provision of the Plan, a participation agreement, or trust agreement shall be construed to make applicable any laws or regulations from which the Tribe is entitled to exemption in accordance with its sovereign status. Nothing herein shall be deemed a general waiver of sovereign immunity of the Tribe. To the extent that a participant is deemed to have satisfied all of the contractual conditions for payment under this Plan after following the administrative claim procedures herein and any required dispute resolution procedures set forth in §2.4.13(d), however, immunity shall not be used as an independent ground to avoid payment of benefits to a participant hereunder. This limited waiver shall not be used in favor of any individual or entity other than an approved and duly designated participant or beneficiary hereunder. All actions undertaken hereunder by the Tribe and its designated representatives are undertaken in their respective official capacities. The rights expressed herein are to allow only enforcement of the express contractual promises made herein and shall not be expanded without express approval of the Council. No rights granted under this Plan may be assigned in any manner.

(d) Top Hat and Governmental Exemptions. The Plan is intended to be treated as a governmental plan, as defined in ERISA Section 3(32). The Plan also is intended to constitute an unfunded "top hat plan" exempt from Parts 2 through 4 of Title I of ERISA. The Tribe does not intend to waive any exemptions or relief provided to top hat or governmental plans under the Act or Code by its voluntary adoption of policies, procedures, or provisions otherwise not required by the Act or Code with respect to

governmental or top hat plans. Rather, the voluntary adoption of any such policies, procedures, or provisions reflects its determination that such policies, procedures, or provisions are consistent with the Tribe's desire to provide sound benefits for participants.

(e) Internal Revenue Code Section 409(a). The Plan shall be operated and construed in compliance with 26 USC 409(a) and the Treasury Regulations issued under 26 USC 409(a), as the same may hereafter be supplemented or amended by future IRS guidance and regulations. Nothing herein shall be construed as a limitation on the Tribe's ability to adopt conforming amendments as may be required for compliance with 26 USC 409(a). (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.5. Eligibility and Participation. (a) Participation in the Plan shall be limited at all times to eligible Council members.

(b) Participation Agreements. (1) Participation Agreements. Each eligible Council member will become a participant by completing and signing a participation agreement provided by the deferred compensation committee and delivering the signed agreement to the deferred compensation committee. All participants in the Plan must enter into a participation agreement acknowledging the terms of their participation in the Plan. Except as set forth in §2.4.5(b)(2) and except in the case of unforeseeable emergency, all participation agreements shall be irrevocable and remain in effect throughout the entire Council term for which they are effective. Each participation agreement shall be in a form approved by the deferred compensation committee, the terms of which shall be arrived at through agreement between the deferred compensation committee and the participant, to the extent consistent with this Plan.

(2) Compensation Reduction Agreements. Each compensation reduction agreement for participants seeking to make compensation reduction contributions shall be entered into prior to the first day of the plan year for which it is to go into effect unless the participant is first offered a participation agreement midyear, in which case the agreement must be entered into within thirty (30) days after presentation. All compensation reduction agreements shall, except in the case of unforeseeable emergency or a hardship distribution pursuant to Treasury Regulation §1.401(k)-1(d)(3), be irrevocable and remain in effect throughout the entire plan year for which they are effective. Each compensation reduction agreement shall be in a form approved by the deferred compensation committee, the terms of which shall be arrived at through agreement between the deferred compensation committee and the participant to the extent consistent with this Plan. In the event that a compensation reduction agreement is cancelled as a result of an unforeseeable emergency or a Code Section 401(k) hardship distribution, such compensation reduction agreement shall be cancelled and not merely suspended, and the participant shall thereafter be subject to the initial deferral election rules of 26 USC 409(a).

(3) Covered Compensation. A compensation reduction agreement may permit deferral elections only with regard to Council compensation.

(c) Termination of Participation. A participant's participation in the Plan but not his or her right, if any, to payment of benefits shall be terminated upon the participant's separation from Council service. If a participant completes his or her term on the Council and is reelected for the next successive Council session, the participant shall not be treated as separated from Council service as a result of the commencement of a new term.

(d) Return to Service. In the event that a participant's service on the Council ends and the participant is later elected to the Council for a nonconsecutive term, such participant shall resume participation in the Plan immediately upon commencement of the new Council term. If the reelected participant wishes to enter into a compensation reduction agreement and the participant has received a full distribution of the benefit previously accrued under the Plan, the participant may enter into a compensation reduction agreement within thirty (30) days of the commencement of the new Council term. If the reelected participant wishes to enter into a compensation reduction agreement and the participant has not received a full distribution of the benefit previously accrued under the Plan, the participant may enter into a compensation reduction agreement within thirty (30) days of the commencement of the new Council term, provided, however, that the participant was not an eligible Council member at any time during the preceding twenty-four (24) months. Any participant who is not eligible to enter into a midyear compensation reduction agreement in accordance with §2.4.5(d) shall be provided the opportunity to complete a compensation reduction agreement prior to the beginning of the next plan year. (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.6. Council Member Contributions. Compensation Reduction Rules and Procedures.

(a) General Rule. All compensation reduction contributions made hereunder must be made pursuant to a compensation reduction agreement meeting the requirements of §2.4.5(b). The amount otherwise includable as a participant's Council compensation shall then be reduced by an amount equal to the contributions made pursuant to his or her compensation reduction agreement. Each participant may direct the Tribe to make contributions to the Plan pursuant to the elections expressly set forth in his or her compensation reduction agreement.

(b) Transfer to Trustee. Compensation reduction contributions shall be forwarded to the trustee or other funding medium as soon as practicable following the end of the payroll period for which the contribution is made.

(c) Election Procedures. A participant's contributions shall be subject to such restrictions regarding minimum and maximum amounts that may be directed as the deferred compensation committee shall determine and announce to plan participants.

(d) Compliance with 26 USC 409(a). All deferral elections are subject to the requirements of 26 USC 409(a), which shall supersede any provisions in this Plan or a

compensation reduction agreement to the contrary. (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.7. Tribal Contributions. (a) Tribal Retirement Contributions. (1) General. The Tribe shall make tribal retirement contributions to the Plan each plan year on behalf of each participant. The Tribal retirement contributions shall be made on an annual basis and shall equal four percent (4%) of the eligible Council member's Council compensation. In the event that an eligible Council member does not participate in the Plan throughout an entire plan year, the tribal retirement contribution made on his or her behalf shall be prorated to reflect the portion of the plan year during which the eligible Council member was an active participant in the Plan.

(2) Source. Tribal retirement contributions are in addition to a participant's Council compensation and are not available for payment in cash except pursuant to the terms of the Plan and are not subject to a deferral or compensation reduction election.

(3) Initial Plan Year. The Tribal retirement contributions for the 2008 plan year shall be calculated based on all eligible Council compensation paid during the participant's current term of service and prior consecutive terms of service.

(4) Earnings Adjustment. The Tribe shall adjust the initial plan year tribal retirement contributions for earnings attributable to the period preceding the date such contributions are deposited in the Plan's trust fund or other funding medium. For earnings adjustment purposes, tribal retirement contributions shall be deemed to accrue on the last day of a particular plan year. The applicable interest rate used to determine any earnings adjustment made pursuant to this paragraph shall be the average return on the Smith Barney Bank Deposit Program, an insured money market program.

(5) Transfer to Trustee. Tribal retirement contributions shall be forwarded to the trustee or other funding medium within a reasonable time following the later of (A) the effective date of the Plan or (B) the payroll period to which the contribution relates.

(b) Social Security Replacement Contributions. (1) Amount. The Tribe shall make Social Security replacement contributions for a plan year on behalf of each participant. The Social Security replacement contributions shall equal fifteen and three-tenths percent (15.3%) of the participant's Council compensation for the plan year.

(2) Source. The Social Security replacement contributions shall be divided into two pieces, both equal to seven and sixty-five hundredths percent (7.65%) of Council compensation, and paid from the following two funding sources. The amount that would have been withheld from the participant's pay and remitted as employee Social Security taxes but for Revenue Ruling 59-354, 1959-2 CB 24, shall be deducted automatically from the participant's Council compensation and paid to the Plan. The amount that would have been paid by

the Tribe as employer Social Security taxes but for Revenue Ruling 59-354, 1959-2 CB 24, shall be funded by the Tribe and paid to the Plan. As of the initial effective date of the Plan, Social Security replacement contributions are not available for payment in cash except pursuant to the opt-out provisions of §2.4.7(b)(3) and as otherwise set forth in the Plan. The portion of the Social Security replacement contributions which represents the employer's portion of Social Security taxes shall not be available to any Tribal Council members who do not participate in the Plan and are not subject to a deferral or compensation reduction election.

(3) Opt-out Election. Each participant shall have the ability to make an opt-out election solely with respect to the portion of the Social Security replacement contributions that are funded through an automatic deduction from the participant's Council compensation [seven and sixty-five hundredths percent (7.65%) of Council compensation]. To make an opt-out election, the participant must elect to waive his or her right to receive full Social Security replacement contributions, in accordance with the election procedures of the deferred compensation committee. Any such opt-out election may be made upon initial plan participation and annually thereafter prior to the beginning of a plan year. All opt-out elections permitted hereunder shall be subject to the requirements of 26 USC 409(a), which shall supersede any provisions in this Plan or a compensation reduction agreement to the contrary.

(4) Initial Plan Year. The Social Security replacement contributions for the 2008 plan year shall be calculated based on all eligible Council compensation paid on or after the effective date of the Plan.

(5) Transfer to Trustee. Social Security replacement contributions shall be forwarded to the trustee or other funding medium within a reasonable time following the payroll period to which the contributions relate.

(c) Social Security Refund Payments. (1) Amount. As of the initial effective date of the Plan, the Tribe shall make Social Security refund payments to the initial plan participants and subject to any deferral elections made hereunder. The Social Security refund payments shall equal the sum of (A) the amounts previously paid by the Tribe as employer Social Security taxes to the Internal Revenue Service on behalf of the initial plan participants and subsequently refunded to the Tribe plus (B) the amounts that would have been paid to the Social Security Administration as employer share of Social Security taxes but for Revenue Ruling 59-354, 1959-2 CB 24, for the period beginning on January 1, 2006 and ending as of the adoption of the Plan. No Social Security refund payments shall be made to the Plan based on the employee portion of Social Security taxes that were or would have been paid to the Internal Revenue Service by any Council member prior to the adoption of the Plan.

(2) Earnings Adjustment. The Tribe shall adjust the Social Security refund payments for earnings attributable to the period preceding the date such payments are paid to the plan participants or deposited in the Plan's trust fund or other funding medium. For earnings adjustment purposes, Social Security refund

payments shall be deemed to accrue on the last day of a particular calendar year. The applicable interest rate used to determine any earnings adjustment made pursuant to this paragraph shall be the average return on the Smith Barney Bank Deposit Program, an insured money market program.

(3) Source. Social Security refund payments are in addition to Council compensation and are not available for payment until the Tribe applies for and receives a refund from the Internal Revenue Service or elects, at its discretion, to advance the anticipated refund amount. In no event shall the Social Security refund payments be payable prior to the adoption of the Plan.

(4) Deferral Election. The initial plan participants may, in accordance with the policies and procedures of the deferred compensation committee, make an election to defer any Social Security refund payments which may become payable during the 2008 plan year. Any such deferral election shall be subject to the requirements of 26 USC 409(a), which shall supersede any provisions in this Plan or a compensation reduction agreement to the contrary.

(5) Transfer to Trustee. Social Security refund payments which are subject to a proper deferral election shall be forwarded to the trustee or other funding medium as soon as practicable following the date on which the Social Security refund payments become payable by the Tribe. (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.8. Accounting — Unfunded Plan. (a) Bookkeeping Accounts Only. The following separate accounts shall be maintained for each participant in the Plan, as appropriate: compensation deferral contributions account, tribal retirement contributions account, and Social Security replacement contributions account. Any Social Security refund payments made on behalf of a participant shall be allocated to the Social Security replacement contributions account. Each such account shall be adjusted as hereinafter provided to reflect any withdrawals and distributions and the appreciation or depreciation in the value of the assets of the trust fund. The establishment and maintenance of separate accounts shall not be construed as giving any person any interest in any specific asset of the trust, which for investment purposes shall be administered as a single fund unless and until otherwise directed by the deferred compensation committee or otherwise provided herein. All accounts called for hereunder are bookkeeping accounts only. This Plan shall be treated as an unfunded plan of deferred compensation wherein benefits are to be paid from the general assets of the Tribe; assets of the Tribe shall not be set aside for purposes of paying benefits hereunder except as may be permitted pursuant to §2.4.11 or §2.4.17.

(b) Valuation and Account Adjustments. Within a reasonable time after each valuation date, the deferred compensation committee or its contracted record keeper shall apportion changes in the net fair market value of each participant's bookkeeping accounts for the period ending on the most recent valuation date. (Res. 2008-058 (part), passed Apr. 14, 2008; reference in ordinance to nonexistent §13.3 corrected through context to §13.2 and codified as §2.4.17)

2.4.9. Vesting. All compensation reduction contributions and all tribal contributions to the Plan shall be fully vested and nonforfeitable. (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.10. Distribution of Benefits. (a) Life-time Benefits. (1) Standard Payment Date. Unless an optional distribution schedule is selected in accordance with §2.4.10(a)(2), the distribution of benefits under the Plan shall normally commence as soon as reasonably practicable following the participant's termination date. Benefits of less than the small account cash out limit set forth in §2.4.10(h), however, shall not be postponed into the next calendar year, except as may be necessary in the normal course and timing required to process, liquidate, and properly account for such distribution.

(2) Deferred Payment; Changes. Notwithstanding the foregoing, a participant may elect to defer the commencement of benefits to a later date (a "deferred payment date"), provided that:

(A) The election may not take effect until at least twelve (12) months after the date on which the election is made;

(B) The election is made no less than twelve (12) months prior to the date payment of benefits would otherwise begin; and

(C) The deferred period is no less than five (5) years past the date payment of benefits would otherwise begin.

Any election to defer benefits shall be made in accordance with rules and procedures adopted by the deferred compensation committee and pursuant to a written form approved by the deferred compensation committee. In no event may a participant change his or her benefit commencement date or form of distribution after benefits become distributable.

(3) No Acceleration. Subject to §2.4.10(g) (Unforeseeable Emergencies) and §2.4.10(h) (Small Account Cash Out Rule), a participant may not accelerate an established payment date to an earlier commencement date.

(b) Death Benefits. Upon the death of a participant prior to his or her lifetime benefit commencement date, benefits to his or her beneficiary or beneficiaries shall commence as soon as practicable following the date of his or her death. Death benefits shall be paid in the same form as would have been paid to the participant, unless the participant has elected an optional form of payment with regard to death benefits and such election has been accepted by the deferred compensation committee.

(c) Method of Distribution. (1) Standard Form Benefits. The standard form of payment of a participant's benefit shall be a cash lump sum payment, payable in accordance with the timing requirements of §2.4.10(a).

(2) Optional Forms. The participant may elect to receive his or her benefit payment (lifetime or death) in annual installments over a period of either three (3) or five (5) years, commencing in accordance with the timing requirements of §2.4.10(a), provided that:

(A) Such elections must be consistent with and limited by forms and procedures adopted by the deferred compensation committee for that purpose; and

(B) Such elections must be consistent with and limited by 26 USC 409(a).

(d) Designation of Beneficiary. Each participant shall have the right to designate, on forms supplied by and delivered to the deferred compensation committee, a beneficiary or beneficiaries to receive his or her benefits hereunder in the event of the participant's death. If the participant is married when the beneficiary designation is filed, the designation will be ineffective unless the participant's spouse consents to the election. Subject to the spousal consent requirements, each participant may change his or her beneficiary designation from time to time in the manner described above. Upon receipt of such designation by the deferred compensation committee, such designation or change of designation shall become effective as of the date of the notice, whether or not the participant is living at the time the notice is received. There shall be no liability on the part of the Tribe, the Council, the deferred compensation committee, or the trustee with respect to any payment authorized by the deferred compensation committee in accordance with the most recent valid beneficiary designation of the participant in its possession before receipt of a more recent and valid beneficiary designation. If no designated beneficiary is living when benefits become payable or if there is no designated beneficiary, the beneficiary shall be the participant's spouse; or if no spouse is then living, such participant's issue, including any legally adopted child or children, in equal shares by right of representation; or if no such designated beneficiary and no such spouse or issue, including any legally adopted child or children, is living upon the death of a participant or if all such persons die prior to the full distribution of such participant's benefits, then the beneficiary shall be the estate of the participant.

(e) Payments to Disabled. If a person entitled to any payment hereunder shall be under a legal disability or in the sole judgment of the deferred compensation committee shall otherwise be unable to apply such payment to his or her own interest and advantage, the deferred compensation committee in the exercise of its discretion may direct the trustee to make any such payment in any one or more of the following ways: (1) directly to such person, (2) to his or her legal guardian or conservator, or (3) to his or her spouse or to any person charged with the legal duty of his or her support to be expended for his or her benefit. The decision of the deferred compensation committee shall in each case be final and binding upon all persons in interest.

(f) Underpayment or Overpayment of Benefits. In the event that, through misstatement or computation error, benefits are underpaid or overpaid, there shall be no liability for any more than the correct benefit sums under the Plan. Overpayment may

be deducted from future payments under the Plan to the extent sufficient payments remain due, and underpayments may be added to future payments under the Plan. A participant or beneficiary may be required to immediately repay any material overpayment in lieu of future benefit reductions to the extent the deferred compensation committee determines, in its sole discretion, that such repayment is necessary or appropriate for compliance with 26 USC 409(a). The Plan shall be entitled to recover any overpayment in excess of the participant's benefit.

(g) Unforeseeable Emergency. Notwithstanding any other provisions of the Plan to the contrary, benefits may become payable prior to the general distribution dates provided above and a compensation reduction agreement entered into pursuant to §2.4.5(b) may be cancelled in the case of an unforeseeable emergency. Amounts distributed with respect to an unforeseeable emergency, however, may not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship. Any cancellation of a compensation reduction agreement consistent with the unforeseeable emergency rules hereunder must be administered on a prospective basis only. The deferred compensation committee, in its discretion, shall determine when a distribution shall be made pursuant to §2.4.10(g).

(h) Small Account Cash Out Rule. Notwithstanding any other provisions of the Plan to the contrary, the deferred compensation committee may accelerate payments to the full extent permitted under 26 USC 409(a) for benefit amounts of less than the current 26 USC 402(g)(1)(B) limitation.

(i) Taxes. Notwithstanding any other provisions of the Plan to the contrary, the deferred compensation committee may accelerate payments to the full extent permitted under 26 USC 409(a) for:

(1) Payment of the Federal Insurance Contributions Act (FICA) tax imposed under 26 USC 3101 and 26 USC 3121(v)(2) on Council compensation deferred under the Plan (the "FICA amount");

(2) Payment of the income tax at source on wages imposed under 26 USC 3401 on the FICA amount; and

(3) Payment of the additional income tax at source on wages attributable to the pyramiding of 26 USC 3401 wages and taxes. (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.11. Investment of Contributions. (a) Investment of Contributions. Contributions to the trust will be invested by the trustee, who shall be appointed by the Council from time to time. The trustee shall invest contributions in accordance with any investment policy which the deferred compensation committee may adopt and may amend from time to

time. The investment policy may include an investment structure whereby the trustee is directed to meet, to the extent possible, hypothetical investment selections made by participants based on limited options similar to those offered under the 401(k) plan. The Plan may also provide earnings credits and reductions to a participant's account based on the hypothetical earnings/losses attributable to his or her selections. However, the trustee, as directed by the deferred compensation committee rather than participants or beneficiaries, shall have ultimate authority as to which investments or investment funds are selected for actual investment of trust assets and the direction of those funds.

(b) **Funding Mechanisms; Trust.** The Plan shall at all times remain an unfunded plan of deferred compensation. It is the intention of the Tribe that the Plan be unfunded for tax purposes and for purposes of Title I of ERISA. Deferrals under the Plan and earnings thereon shall remain part of the general assets of the Tribe and subject to the claims of the Tribe's general creditors, and the benefit provisions of the Plan shall constitute a mere promise by the Tribe to make benefit payments in the future. However, all Plan funds will be held in a separate trust designed after the Internal Revenue Service's model "rabbi trust" as set forth in Revenue Procedure 92-64, 1992-2 CB 422, and referred to herein as the "trust agreement." (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.12. Inalienability of Benefits. A participant's rights to benefit payments under the Plan are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by creditors of the participant or the participant's beneficiaries. (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.13. Administration. (a) **Deferred Compensation Committee.** The deferred compensation committee shall be the administrator of the Plan. Certain distributions, however, shall be processed by the distribution agent, as set forth in §2.4.13(d).

(b) **Allocation of Fiduciary Responsibility.** The deferred compensation committee is the named fiduciary with respect to the administration of the Plan; the deferred compensation committee shall not be responsible for any fiduciary functions or other duties assigned to the trustee or to the distribution agent pursuant to this Plan or the trust agreement or the distribution agent agreement.

(c) **Powers of the Deferred Compensation Committee.** (1) **General Powers.** The deferred compensation committee shall have the power and discretion to perform the administrative duties described in this Plan or required for proper administration of the Plan and shall have all powers necessary to enable it to properly carry out such duties. Without limiting the generality of the foregoing and subject to the review and appeal rights set forth herein, the deferred compensation committee shall have the power and discretion to construe and interpret this Plan, to hear and resolve claims relating to this Plan, and to decide all questions and disputes arising under this Plan. The deferred compensation committee shall determine, in the exercise of its discretion, the eligibility of employees to participate in the Plan, the status and rights of a participant, and the identity of the beneficiary or beneficiaries entitled to receive any benefits payable

hereunder on account of the death of a participant. The deferred compensation committee shall not, however, have the power or discretion to contradict the express terms and provisions of this Plan document, the trust agreement, or the distribution agent agreement.

(2) Reporting and Disclosure. The deferred compensation committee shall file all reports and forms lawfully required to be filed by the deferred compensation committee with any governmental agency or department, federal, state, or tribal laws of the Tribe and shall distribute any forms, reports, statements, or plan descriptions lawfully required to be distributed to participants and others by any governmental agency or department, or federal, state, or tribal laws.

(3) Investment. The deferred compensation committee shall have power to direct specific investments of the trust fund only where such power is expressly conferred by this Plan and only to the extent described in this Plan. All other investment duties shall be the responsibility of the trustee.

(4) Participation and Compensation Reduction Agreements. The deferred compensation committee shall have the power and authority to negotiate the specific terms of each participation and compensation reduction agreement consistent with the purposes of this Plan, but which are subject to all conditions and limitations of this Plan.

(d) Distribution Procedures. (1) Powers of the deferred compensation committee and Trustee Related to Plan Distributions. Except as set forth in §2.4.13(d)(4) and §2.4.13(d)(5), all distributions under the Plan shall be processed by the trustee at the direction of the deferred compensation committee, and the deferred compensation committee shall have exclusive authority to direct the payment or cessation of Plan benefits. The trustee shall oversee the processing of distributions in accordance with the express terms and conditions herein. The trustee is not a fiduciary and is not authorized to amend or disregard the terms of the Plan.

(2) Powers of the Distribution Agent Related to Plan Distributions. Pursuant to §2.4.13(d)(4) and §2.4.13(d)(5), the distribution agent shall process contested distributions and all distributions payable upon Plan termination. The distribution agent shall serve as a nondiscretionary agent to oversee the processing of distributions in accordance with the express terms and conditions herein. The distribution agent is not a fiduciary and is not authorized to amend or disregard the terms of the Plan.

(3) General Distribution Procedures. Upon any distribution event, the deferred compensation committee shall determine the timing and form of benefit payment and shall prepare a written statement setting forth a proposed payment schedule to be followed. The deferred compensation committee shall then forward the proposed payment schedule to the participant or beneficiary if the participant is deceased. If the participant or beneficiary concurs with the

proposed distribution schedule, the deferred compensation committee shall direct the trustee to disburse payment from the trust consistent with the payment schedule. If the participant does not concur with a proposed distribution schedule within ten (10) calendar days after receiving a proposed distribution schedule (the "concurrency date"), the deferred compensation committee will meet with the participant in an effort to determine whether all parties can reach an agreement short of arbitration as set forth below. If the parties are unable to reach an agreement within thirty (30) days after the concurrency date or such other extended period as agreed and stipulated to by all parties, the distribution will be processed as a contested distribution pursuant to §2.4.13(d)(4).

(4) Contested Distribution Procedures. If the participant and the deferred compensation committee fail to concur with a proposed distribution schedule, the disputed distribution schedule shall be treated as a claim for benefits in accordance with the claims procedures of §2.4.13(e). The deferred compensation committee shall promptly notify the trustee of the claim and the trustee shall immediately transfer from the trust to the distribution agent funds equal to the contested distribution amount to be held in escrow by the distribution agent pending resolution of the matter in accordance with the claims procedures of §2.4.13(e) and, if necessary, the binding arbitration provisions of §2.4.13(f). If the claim is resolved through the Plan's claims procedures, the participant and deferred compensation committee shall provide a joint notice to the distribution agent setting forth the final distribution schedule. If the claim is submitted to arbitration, the arbitrator's determination of the final distribution schedule shall be forwarded to the distribution agent by the arbitrator. Upon receipt of the final distribution schedule, the distribution agent shall proceed with processing payments in accordance with such final distribution schedule. Any excess funds transferred to the distribution agent prior to the resolution of the claim shall be promptly returned to the trustee for deposit into the trust.

(5) Distributions upon Plan Termination. If the employer terminates the Plan pursuant to §2.4.17, all assets held in the trust as of the date of the termination action shall be transferred immediately by the trustee to the distribution agent. Notwithstanding anything herein to the contrary, the distribution agent shall have exclusive authority to direct the payment or cessation of Plan benefits upon Plan termination, as determined in accordance with the terms of the Plan, the trust, and the distribution agent agreement.

(6) Distribution Expenses; Indemnification. The fees and expenses of the trustee and the distribution agent, including insurance and/or bonding, shall be paid by the employer. The participant, employer, and deferred compensation committee indemnify and hold the trustee and the distribution agent harmless for any liability or damages of any nature arising out of §2.4.13(d) except to the extent of the trustee's or the distribution agent's negligence or willful misconduct.

(e) Claims Procedures. (1) General. Any eligible Council member, participant, or beneficiary who is dissatisfied with the determination of any right or interest under this

Plan may file a written statement setting forth the basis of the claim with the deferred compensation committee in a manner prescribed by the deferred compensation committee. In connection with the determination of a claim filed under §2.4.13(e) or with review of a claim denied under §2.4.13(e), the claimant may examine this Plan and any other pertinent documents generally available to participants relating to the claim and may submit comments in writing.

(2) Disposition of Claim. A written notice of the disposition of any claim shall be furnished to the claimant within ninety (90) days after the claim is filed with the deferred compensation committee unless special circumstances require an extension of time, in which case, the deferred compensation committee will have up to an additional ninety (90) days to process the claim. If an extension of time is required, the deferred compensation committee will provide written notice of such extension and the reasons therefore prior to the end of the initial ninety (90) day review period. If the claim is denied, in whole or in part, the claimant shall also be notified in writing that a review procedure is available.

(3) Review of Claim Disposition. Within sixty (60) days after receiving the written notice of the deferred compensation committee's disposition of the claim, the claimant may request in writing a review meeting with the deferred compensation committee to present reasons why the claim should be allowed. The claimant also may submit a written statement of his or her claim and the reasons for granting the claim. Such statement may be submitted in addition to or in lieu of the review meeting with the deferred compensation committee. The deferred compensation committee shall have the right to request of and receive from a claimant such additional information, documents, or other evidence as the deferred compensation committee may reasonably require. If the claimant does not request a review meeting within sixty (60) days after receiving written notice of the deferred compensation committee's disposition of the claim, the claimant shall be deemed to have accepted the deferred compensation committee's written disposition, unless the claimant shall have been physically or mentally incapacitated so as to be unable to request review within the sixty (60) day period. A decision on review shall be rendered in writing by the deferred compensation committee not later than sixty (60) days after receipt of the request for review, unless special circumstances require an extension of time, in which case, the deferred compensation committee will have up to an additional sixty (60) days to process the claim. If an extension of time is required, the deferred compensation committee will provide written notice of such extension and the reasons therefore prior to the end of the initial sixty (60) day review period. Upon resolution of the review, the deferred compensation committee shall promptly communicate its decision to the claimant in writing. If the claim is denied, the written notice of decision shall set forth the specific reason(s) for the denial and references to relevant Plan documentation. In any event, if a claim is not determined within the applicable time periods subject to any extensions noticed by the deferred compensation committee, it shall be deemed to be denied.

(4) Exhaustion Required. Completion of the claims procedures described in this section shall be a mandatory precondition that must be satisfied prior to commencement of arbitration under §2.4.13(f) by a person claiming rights under the Plan or by another person claiming rights through such a person. The deferred compensation committee may, in its sole discretion, waive these procedures as a mandatory precondition to arbitration. After exhausting internal claims procedures, a claimant may initiate binding arbitration proceedings in accordance with §2.4.13(f) if he or she believes that the deferred compensation committee has abused its discretion in its disposition of the claim. The deferred compensation committee is not authorized to waive tribal sovereignty, which may be waived only by specific and express action of the Council.

(f) Arbitration. (1) General. Any eligible Council member, participant, or beneficiary who is dissatisfied with the determination of any right or interest under this Plan and who has exhausted the Plan's internal claims procedures or has obtained a waiver of such claims procedures from the deferred compensation committee may submit his or her claim to binding arbitration. The binding arbitration available hereunder shall be absolutely exclusive for any and all purposes, and there shall be no other dispute resolution mechanism including judicial action permitted with respect to this Plan. Any arbitration commenced hereunder shall be conducted, and any resulting decision shall be enforced, in accordance with the Federal Arbitration Act. The arbitrator shall be selected as follows: the deferred compensation committee shall designate a list of three (3) individuals to serve as arbitrator. The candidates shall be attorneys licensed in the state of Washington and shall be independent of the deferred compensation committee, the trustee, the distribution agent, and the employer. The participant shall select an arbitrator from the three (3) candidates provided. The arbitrator shall determine whether the deferred compensation committee abused its discretion in its denial of the claim. The arbitrator shall review the deferred compensation committee's decision, de novo, only following a finding of abuse of discretion. The arbitrator shall have jurisdiction and authority to award only Plan benefits and prejudgment interest and shall have no authority or jurisdiction to award, without limitation, extra compensatory damages or punitive damages. Expenses and costs of the arbitration including the arbitrator's fees shall be paid by the employer. The remedy, if any, awarded by the arbitrator shall be the sole and exclusive remedy for each and every claim subject to arbitration under this Plan. The arbitrator's decision shall be final and binding. There shall be no judicial review.

(2) Contested Distributions. In the event that a contested distribution schedule is submitted to arbitration in accordance with §2.4.13(d)(4), the arbitration proceeding shall be conducted as set forth in §2.4.13(f)(1) with the following modification. The arbitrator shall be selected as follows: the distribution agent shall designate a list of four (4) individuals to serve as arbitrator. The candidates shall be attorneys licensed in the state of Washington and shall be independent of the deferred compensation committee, the trustee, the distribution agent, and the employer. The participant and the deferred compensation committee shall each be entitled to strike one (1) candidate for any

reason. The distribution agent shall select the arbitrator from among the remaining candidate(s).

(g) Creation of Committee. The Council shall appoint the deferred compensation committee to serve in accordance with the terms of this chapter. The deferred compensation committee members shall hold office at the pleasure of the Council. The deferred compensation committee members shall serve without compensation but shall be reimbursed for all expenses by the Tribe. The deferred compensation committee shall conduct itself in accordance with the provisions of §2.4.13. The members of the deferred compensation committee may resign with thirty (30) days' notice in writing to the Council and may be removed immediately at any time by written notice from the Council. If no members of the deferred compensation committee remain, the Council shall serve as the deferred compensation committee until successors are appointed.

(h) Chairman and Secretary. The deferred compensation committee shall elect a chairman from among its members and shall select a secretary who is not required to be a member of the deferred compensation committee and who may be authorized to execute any document or documents on behalf of the deferred compensation committee. The secretary of the deferred compensation committee or his or her designee shall record all acts and determinations of the deferred compensation committee and shall preserve and retain custody of all such records, together with such other documents as may be necessary for the administration of this deferred compensation committee or as may be required by law.

(i) Appointment of Agents. The deferred compensation committee may appoint such other agents, who need not be members of the deferred compensation committee, as it may deem necessary for the effective performance of its duties, whether ministerial or discretionary, as the deferred compensation committee may deem expedient or appropriate. The compensation of any agents who are not employees of the Tribe shall be fixed by the deferred compensation committee within any limitations set by the Council.

(j) Majority Vote and Execution of Instruments. In all matters, questions, and decisions, the action of the deferred compensation committee shall be determined by a majority vote of its members. The deferred compensation committee may meet informally. All instruments executed by the deferred compensation committee shall be executed by a majority of its members or by any member of the deferred compensation committee designated to act on its behalf.

(k) Allocation of Responsibilities among Committee Members. The deferred compensation committee may allocate responsibilities among its members or designate other persons to act on its behalf. Any allocation or designation, however, must be set forth in writing and must be retained in the permanent records of the deferred compensation committee.

(l) Conflict of Interest. No member of the deferred compensation committee who is a participant shall take any part in any action relating to his or her participation in the

Plan or his or her entitlement to benefits under the Plan. Such action shall be voted or decided by the remaining members of the deferred compensation committee or by another individual appointed by the Council to vote on or decide such action if no deferred compensation committee member is permitted to take action pursuant to this section. (Res. 2008-058 (part), passed Apr. 14, 2008; reference in ordinance to nonexistent §13.3 corrected through context to §13.2 and codified as §2.4.17)

2.4.14. Scope of Responsibility. (a) General. The Tribe, the Council, the deferred compensation committee, the distribution agent, any investment manager, and the trustee shall perform the duties respectively assigned to them under this Plan and the trust agreement and shall not be responsible for performing duties assigned to others under the terms and provisions of this Plan or the trust agreement. No inference of approval or disapproval is to be made from the inaction of any party described above or the employees or agents of any of them with regard to the action of any other such party. Persons, organizations, or corporations acting in a position of any fiduciary responsibility with respect to the Plan or the trust fund may serve in more than one fiduciary capacity.

(b) Advisors. The Tribe, the deferred compensation committee, and the trustee shall have authority to employ advisors, legal counsel, accountants, and investment managers in connection with the administration of the trust fund, as set forth herein and in the trust agreement. To the extent permitted by applicable law, the Tribe, the Council, the deferred compensation committee, and the trustee shall not be liable for complying with the directions of any advisors, legal counsel, accountants, or investment managers appointed pursuant to this Plan or the trust agreement. Fees for such advisors shall be paid by the Tribe subject to parameters established by the Council.

(c) Indemnification. To the extent permitted by law, the Tribe shall and does hereby jointly and severally indemnify and agree to hold harmless its employees, officers, elected officials, and directors who serve in fiduciary capacities with respect to the Plan and the trust agreement from all loss, damage, or liability, joint or several, including payment of expenses in connection with defense against any such claim, for their acts, omissions, and conduct and for the acts, omissions, and conduct of their duly appointed agents, which acts, omissions, or conduct constitute or are alleged to constitute a breach of such individual's fiduciary or other responsibilities under the Act or any other law, except for those acts, omissions, or conduct resulting from his or her own willful misconduct, willful failure to act, or gross negligence; provided, however, that if any party would otherwise be entitled to indemnification hereunder in respect of any liability and such party shall be insured against loss as a result of such liability by any insurance contract or contracts, such party shall be entitled to indemnification hereunder only to the extent by which the amount of such liability shall exceed the amount thereof payable under such insurance contract or contracts.

(d) Insurance. The Tribe may obtain insurance covering itself and others for breaches of fiduciary and other obligations under this Plan or the trust agreement to the extent permitted by law, and nothing in the Plan or the trust agreement shall restrict the right of any person to obtain such insurance for him- or herself in connection with the

performance of his or her duties under this Plan or the trust agreement. The trustee, the distribution agent, the deferred compensation committee, and the Tribe do not in any way guarantee the trust fund from loss or depreciation. (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.15. General Provisions. (a) **Limitation on Participant's Rights.** Participation in the Plan shall not give any individual the right to be retained in the Tribe's employ or service, or any right or interest in the trust fund other than as herein provided. The Tribe reserves the right to dismiss any individual without any liability for any claim either against the trust fund, except to the extent herein provided, or against the Tribe.

(b) **Heirs and Successors.** All of the provisions of this Plan shall be binding upon all persons who shall be entitled to any benefits hereunder and their heirs and legal representatives. (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.16. Amendment. The Tribe shall have the right at any time, by an instrument in writing duly executed, acknowledged, and delivered to the deferred compensation committee and the trustee, to modify, alter, or amend this Plan, in whole or in part, prospectively or retroactively; provided, however, that:

(a) The duties and liabilities of the deferred compensation committee and the trustee hereunder shall not be substantially increased without their written consent;

(b) The amendment shall not reduce any participant's interest in the Plan, calculated as of the date on which the amendment is adopted;

(c) The amendment shall not reduce or impair a participant's right (form or timing) to receive a distribution, with regard to benefits determined as of the date on which the amendment is adopted;

(d) No amendment shall make the trust revocable; and

(e) No amendment shall violate 26 USC 409(a). (Res. 2008-058 (part), passed Apr. 14, 2008)

2.4.17. Termination of Plan. (a) **Termination.** It is the expectation of the Tribe that this Plan and the payment of contributions hereunder will be continued indefinitely. However, continuance of the Plan is not assumed as a contractual obligation of the Tribe, and the right is reserved at any time to terminate this Plan subject to 26 USC 409(a) or to reduce, temporarily suspend, or discontinue future contributions hereunder.

(b) **Distributions upon Termination of Plan.** Termination of the Plan shall not automatically result in a termination of the trust or in an acceleration of the distribution of benefits, which shall be maintained in trust and distributed at the times and in the manner specified in §2.4.10. Notwithstanding the foregoing, however, the Council may elect to terminate the trust and/or accelerate the distribution of benefits following termination of the Plan; provided, however, that such termination of the trust or

acceleration of benefits complies with the termination and liquidation requirements of 26 USC 409(a) and the Treasury Regulations promulgated thereunder and that benefits are distributed following termination of the Plan in accordance with the provisions of §2.4.13(d)(5). (Res. 2008-058 (part), passed Apr. 14, 2008; reference in ordinance to nonexistent §11.5(e) corrected through context to §10.5(e) and codified as §2.4.13(d)(5))

Note: Subsection 2.4.10(i)(A-C) renumbered 2.4.10(i)(1-3) for consistency.