

Introduced by the County Services and Finance Committees of the:

**INGHAM COUNTY BOARD OF COMMISSIONERS**

**RESOLUTION FOR AN AMENDMENT AND RESTATEMENT OF  
INGHAM COUNTY'S DEFERRED COMPENSATION PLAN**

**RESOLUTION #11-161**

WHEREAS, the County Administration has determined that the County's Deferred Compensation Plan needs to be revised and updated.

THEREFORE BE IT RESOLVED, that the attached Amended and Restated Ingham County Deferred Compensation Plan, an eligible plan under Code Section 457(b), is adopted in the form presented, effective as of the dates set forth therein.

BE IT FURTHER RESOLVED, that the action of the Controller/Administrator necessary for the adoption of the Plan on behalf of Ingham County is hereby affirmed and ratified.

BE IT FURTHER RESOLVED, that the Controller/Administrator is authorized to take further action on behalf of Ingham County that are necessary to execute any future amendments to or restatement of the Plan and that such amendment or restatement will be adopted by Ingham County without need for further Resolution or Board of Commissioners approval. This delegation of authority is limited to technical amendments to the Plan to keep it in compliance with applicable laws and other minor amendments that do not affect the substantive rights of current Plan participants.

**COUNTY SERVICES: Yeas:** De Leon, Copedge, Schor, Vickers, Dragonetti

**Nays:** None      **Absent:** Celentino      **Approved 5/17/11**

**FINANCE: Yeas:** Schor, Tsernoglou, Nolan, Bahar-Cook, McGrain, Dougan

**Nays:** None      **Absent:** None      **Approved 5/18/11**

**AMENDED AND RESTATED INGHAM COUNTY**

**DEFERRED COMPENSATION PLAN**

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## Article 1

### Establishment of the Plan

1.1 **Establishment of the Plan.** The eligible deferred compensation Plan established by the Employer for the Participants pursuant to Code section 457(b) is hereby restated.

1.2 **Purpose of the Plan.** The purpose of this Plan is to attract and retain Eligible Employees by allowing them to designate a portion of their respective Compensation to be deferred each month and invested by the Employer in a manner which each Employee shall determine for himself or herself in accordance with the investment options made available by the Administrator. A Participant's Account shall not be paid (or otherwise made available) to the Participant except as a Retirement Distribution (including a transfer described in Section 7.14) or a Death Benefit Distribution, or as a Hardship Distribution (all as defined and provided below).

1.3 **No Right Other Than Provided by Plan.** The establishment of the Plan and the purchase or retention of any Investment Contract(s) or other investments under the Plan shall not be construed as giving to any Participant or Beneficiary or any other person any legal or equitable right against the Employer or its representatives, except as expressly provided by the Plan.

1.4 **Plan is Binding.** This Plan, and all acts and decisions taken under it, shall be binding and conclusive, for all purposes, upon all interested persons, and upon the heirs, executors, administrators, and successors of any and all such persons.

1.5 **Effective Date.** This amendment and restatement of the Plan shall be effective as of January 1, 2011, except as otherwise specifically provided.

## Article 2

### Definitions

Whenever used in the Plan, the following terms shall have the respective meanings as set forth below:

2.1 "**Account**" means the bookkeeping account maintained under the Plan for each Participant. A Participant's Account shall at all times reflect the amount of the Participant's Deferred Compensation, any income or loss attributable to the investment of the Participant's Account, any amounts transferred or accepted as a transfer under Section 7.14, any distributions to the Participant, and any fees or expenses charged against the Participant's Account. The value of the Participant's Account is the value of the applicable sub-account(s) under the Investment Contract(s). The Participant shall receive periodic Account reports in the form prescribed by the Administrator. A Participant is at all times 100 percent vested in his or her Account.

2.2 "**Administrator**" means the Ingham County Deferred Compensation Plan Committee (the "Committee") or another person, people or corporation designated by the Board to administer the Plan in accordance with Article 3. The Committee shall consist of the Ingham County Human Resources Director, the Ingham County Controller and the Ingham County Financial Services Director. The Committee shall elect a Chairperson and a Vice-Chairperson at the first meeting of each calendar year.

2.3 "**Beneficiary**" means the natural person(s) or legal entity(ies) designated by the Participant to receive any undistributed portion of the Participant's Account payable upon or after the Participant's death (the "primary" Beneficiary(ies)), or upon or after the Beneficiary's death (the "contingent" Beneficiary(ies)). If the Participant designates more than one Beneficiary for either a "primary" or "contingent" status, all Beneficiaries of that status shall have equal shares, unless the Participant specifies otherwise.

If no valid Beneficiary designation has been made or the designee has predeceased the Participant, the Participant is deemed to have designated the following as the Participant's Beneficiary(ies) and contingent Beneficiary(ies), with priority in the order named:

- (a) The Participant's spouse.
- (b) The Participant's descendants by right of representation.
- (c) The Participant's estate.

2.4 "**Board**" means Ingham County's governing body according to law and its governing documents.

2.5 "**Code**" means the Internal Revenue Code of 1986, as amended. Any reference to Regulations is a reference to Treasury department regulations under the Code, unless otherwise specified. Any reference to a Section of the Code or Regulations shall be construed to include a reference to the corresponding provision of any successor law.

2.6 "**Compensation**" means the Employee's total wages from the Employer for services performed that would otherwise be payable to the Employee in the absence of any agreement to defer compensation under the Plan, or under any other deferred compensation plan or arrangement of any kind.

2.7 **"Contributions"** means voluntary Participant contributions to the Plan made pursuant to a Participant's Participation Agreement. Contributions under the Plan shall not be reduced on account of a Participant's attainment of any age.

2.8 **"Death Benefit Distribution"** means any distribution that does not begin before the death of the Participant.

2.9 **"Deferred Compensation"** means the amount of Contributions made to the Plan with respect to a Participant.

2.10 **"Eligible Employee"** means an Employee of Employer.

2.11 **"Eligible Retirement Plan"** means an eligible retirement plan, as defined in Code section 402(c)(8)(B).

2.12 **"Eligible Rollover Distribution"** means an eligible rollover distribution, as defined in Code section 402(c)(4), including an eligible rollover distribution to a surviving spouse under Code section 402(c)(9).

2.13 **"Employee"** means any common law employee of the Employer.

2.14 **"Employer"** means Ingham County, which is an "eligible employer" within the meaning of Code section 457(e)(1)(A). Employer also includes Ingham County Medical Care Facility.

2.15 **"Excess Deferral"** means any Deferred Compensation with respect to a Participant for a taxable year that exceeds the limitations on contributions set forth in Article 5.

2.16 **"Hardship Distribution"** means a distribution under Section 7.7 below.

2.17 **"Includible Compensation"** means compensation for service performed for the Employer, and it shall have the meaning given to the term "participant's compensation" by Code section 415(c)(3). Includible Compensation shall include elective contributions made by the Employer on behalf of a Participant that are not includible in gross income under Code sections 125, 132(f), 402(g)(3), and 457.

2.18 **"Investment Contract"** means any annuity contract, trust, or custodial account holding regulated investment company stock, established in accordance with Code section 457(g), in which the assets of the Plan are held for investment purposes. The provisions of the Investment Contracts are set forth in contracts and described in prospectuses provided by the issuers of the Investment Contracts, and those provisions (to the extent not inconsistent with the provisions of the Plan) are incorporated by reference (only to the extent necessary to apply the provisions of the Plan).

2.19 **"Normal Retirement Age"** means the age at which the Participant has the right to retire without the consent of the Employer and to immediately receive unreduced normal retirement benefits under the Employer's basic retirement plan and that is not later than age 70½.

2.20 **"Participant"** means an Eligible Employee or former Eligible Employee who has Deferred Compensation under the Plan and who has not yet received all of the payments to which he or she is entitled under the Plan. An Eligible Employee becomes a Participant by entering into a Participation Agreement.

2.21 **"Participation Agreement"** means the agreement (in the form prescribed by the Administrator), as amended from time to time, entered into between the Employer and the Participant under which the Participant elects to participate in the Plan. If the Participant elects to make voluntary Participant Contributions, the Participation Agreement shall reflect the agreement of the Participant and the Employer to defer amounts of the Participant's Compensation according to the provisions of the Plan. A Participation Agreement shall indicate the amount or percentage of the Participant's Compensation that is to be deferred.

2.22 **"Payout Option"** means, except as limited below, any of the annuity options or income options or settlement options or other options for payment that are available under the applicable Investment Contract(s) held under the Plan, or that may otherwise be made available by the Administrator on a non-discriminatory basis. The Administrator shall not permit the use of any payout option that is based on gender-distinct actuarial tables or that otherwise unlawfully discriminates against any person. The Administrator shall not permit the Participant or Beneficiary to elect any Payout Option that (at the time the distribution begins) does not satisfy the provisions of the Plan, including the applicable requirements of Code section 401(a)(9).

2.23 **"Plan"** means this Plan, the Ingham County Deferred Compensation Plan.

2.24 **"Regulation"** means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, as amended from time to time.

2.25 **"Retirement Distribution"** means any distribution other than a Hardship Distribution that begins before the death of the Participant.

2.26 **"Spouse"** or **"surviving Spouse"** means the Spouse or surviving Spouse of the Participant.

2.27 **"Year"** means the calendar year. For the purposes of administering the Plan, the Administrator shall be entitled to rely on the assumption that a Participant's taxable year is the calendar year, unless the Participant gives written notice specifying his or her taxable year.



## Article 3

### Administration

3.1 **Discretionary Powers and Authority of Administrator.** The Administrator shall interpret and construe the provisions of the Plan, decide any disputes which may arise relative to the rights of Employees, past and present, and their Beneficiaries, under the terms of the Plan, give instructions and directions with respect to the Investment Contract(s), as necessary, prescribe procedures to be followed by Participants or Beneficiaries filing applications for benefits and, in general, direct the administration of the Plan. Any person affected by the Plan may consult with the Administrator on any matters relating to the Plan. The Administrator shall have any and all power and authority (including discretion with respect to the exercise of that power and authority) which are necessary or convenient to enable it to carry out its duties under the Plan. By way of illustration and not limitation, the Administrator has the power and authority to

(a) make rules and regulations with respect to the administration of the Plan that are not inconsistent with the Plan, the Code and, if applicable, ERISA;

(b) determine all questions that may arise as to the eligibility, benefits, status and rights of any person claiming benefits under the Plan; and

(c) subject to and consistent with the Code and, if applicable, ERISA, construe and interpret the Plan and correct any defect, supply any omissions or reconcile any inconsistencies in the Plan.

3.2 **Records.** The Administrator shall keep records containing all relevant data pertaining to the administration of the Plan.

3.3 **Assurance of Receipt of Benefits.** The Administrator shall take all necessary action to ensure that Participants receive the benefits to which they are entitled under the Plan.

3.4 **Conflict of Interest.** The Administrator may not decide any matter relating solely to the Administrator's rights or benefits under the Plan; these decisions shall be made by an individual appointed by the Board.

3.5 **Exercise of Discretion on Uniform Basis.** In those instances where the Administrator is granted discretion in making its determinations, and the decision of the Administrator affects the benefits, rights or privileges of Participants, such discretion shall be exercised uniformly so that all Participants similarly situated are similarly treated.

3.6 **Employment of Agents.** The Administrator has the right to employ agents and advisors to assist the Administrator in the performance of its duties, and it has the right to delegate administrative duties to such agents.

3.7 **Reliance Upon Information and Advice.** The Administrator may rely upon the written information, opinions or certificates supplied by any agent, counsel, actuary, investment manager, physician or fiduciary.

3.8 **Compensation of Administrator.** The Administrator, if it is not an Employee of Employer, shall be paid a reasonable compensation for its services on behalf of the Plan, as may be agreed upon from time to time by the Employer and the Administrator.

3.9 **Reimbursement for Expenses.** Any expense properly incurred by the Administrator shall be reimbursed or otherwise paid in full from the Plan to the extent such expense is not reimbursed or otherwise paid by the Employer.

3.10 **Liability Limitations.** The Administrator is not liable or responsible for the acts of commission or omission of another fiduciary, unless:

(a) the Administrator knowingly participated or knowingly attempted to conceal the act or omission of another fiduciary and the Administrator knew the act or omission was a breach of fiduciary responsibility by the other fiduciary,

(b) the Administrator had knowledge of a breach by the other fiduciary and did not make reasonable efforts to remedy the breach, or

(c) the Administrator's breach of the Administrator's fiduciary responsibility permitted the other fiduciary to commit a breach.

3.11 **Resignation of Administrator.** The Administrator may resign by giving written notice to the Employer not less than 30 days before the effective date of the resignation.

3.12 **Removal of Administrator; Filling Vacancy.** The Administrator may be removed at any time, without cause, by the Board. In such case, the Board shall fill the vacancy as soon as reasonably possible after the vacancy occurs. Until a new Administrator is appointed, the Board has full authority to act as the Administrator.

3.13 **Allocation and Delegation of Responsibilities.** If more than one person is appointed as Administrator, the responsibilities of each Administrator may be specified by the Board and accepted in writing by each Administrator. In the event that no such delegation is made by the Board, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Board and the issuer of an Investment Contract in writing of such action and specify the responsibilities of each Administrator. The issuer of an Investment Contract thereafter may accept and rely upon any documents executed by the appropriate Administrator until such time as the Board or the Administrators file with the issuer of an Investment Contract a written revocation of such designation.

3.14 **Majority Actions.** Except where there has been an allocation and delegation of administrative authority pursuant to Section 3.13, if there is more than one Administrator, they shall act by a majority of their number, but they may authorize one or more of them to sign all papers on their behalf.

## Article 4

### Voluntary Participant Contributions

4.1 **Enrollment for Voluntary Participant Contributions.** An Employee may elect to make voluntary Participant Contributions to the Plan by entering into a Participation Agreement. The amount of voluntary Participant Contributions provided for under a Participation Agreement may not be less than the minimum amount, if any, required under the Investment Contract(s) in which the Participant's Account is invested, and they may not exceed the limits on Contributions set forth in Article 5 below.

4.2 **Deferral Date.** Voluntary Participant Contributions may be made to the Plan for any calendar month only if a Participation Agreement providing for the Contributions has been entered into before the first day of the month. In the case of a new Employee, voluntary Participant Contributions may be made for the calendar month during which the Employee was hired if a Participation Agreement providing for the Contributions is entered into before the date on which the Employee becomes an Employee.

4.3 **Amendment of Participation Agreement.** A Participant Agreement shall remain in effect until modified in writing by the Participant. Subject to the requirements of Section 4.2 and this Section, a Participant may at any time amend his or her Participation Agreement to change the amount of his or her voluntary Participant Contributions, his or her investment designation, and his or her designated Beneficiary. An amendment to a Participation Agreement shall not become effective prior to the date on which it is received by the Administrator. A change in the amount of voluntary Participant Contributions shall take effect as of the next month. A change in investment designation shall take effect at the times uniformly applied by the Administrator and according to the provisions of the Investment Contract(s). A change in a Beneficiary designation shall become effective upon receipt by the Administrator.

4.4 **Leave of Absence.** Unless a Participant's Participation Agreement is otherwise amended, if the Participant is absent from work due to a leave of absence, voluntary Participant Contributions shall continue under the Plan with respect to the Participant to the extent that his or her Compensation continues. If the Participant does not have Compensation during the leave of absence, his or her voluntary Participant Contributions shall resume when the Participant returns to work.

## Article 5

### Limitations on Contributions

5.1 **Maximum Amount of Contributions.** Except as provided in Sections 5.2 and 5.3 below, the maximum amount of Contributions with respect to a Participant for any taxable year shall not exceed the lesser of:

- (a) the Applicable Dollar Amount, as defined in Code section 457(e)(15)(A) and as adjusted for cost-of-living in accordance with Code section 457(e)(15)(B) (the “Applicable Dollar Amount”); or
- (b) 100% of the Participant's Includible Compensation.

5.2 **Special Catch-Up.** Notwithstanding Section 5.1, for one or more of the Participant's last three taxable years of employment with the Employer ending before the Participant attains Normal Retirement Age, the ceiling set forth in Section 5.1 shall be the lesser of:

- (a) twice the Applicable Dollar Amount in effect under Section 5.1(a) above; or
- (b) the sum of the Plan ceiling established for purposes of Section 5.1 for the taxable year (determined without regard to this Section), plus so much of the Plan ceiling established for purposes of Section 5.1 for taxable years before the taxable year in question as has not previously been used under Section 5.1 (the “Underutilized Amount”). A prior taxable year shall be taken into account under this subsection (b) only if:
  - (1) it begins after December 31, 1978,
  - (2) the Participant was eligible to participate in the Plan during all or any portion of the taxable year, and
  - (3) compensation deferred (if any) under the Plan during the taxable year was subject to a plan ceiling established under Regulation section 1.457-2(e)(1).

The provisions of this Section 5.2 may not be utilized by the same Participant more than once, whether or not they are used in less than all of the three taxable years ending before the Participant attains Normal Retirement Age and whether or not the Participant rejoins the Plan or participates in another eligible plan after retirement.

In determining a Participant’s Underutilized Amount, the Plan shall take into consideration:

- (i) Prior to 2002, if a Participant made deferrals to the Plan and deferrals to any other Code section 457(b) plan, salary reduction contributions made to Code section 401(k) plans, Code section 403(b) plans, Code section 402(h)(1) simplified employee pension (SARSEP) plans, Code section 408(p) simple retirement accounts, and amounts deferred under any plan for which a deduction is allowed because of a contribution to an organization described in Code section 501(c)(18), such deferrals to the other plans will be taken into account in determining a Participant’s Underutilized Amount under Code Section 457(b)(2). In addition, Includible Compensation shall be limited to the limitation in effect in the calendar year in which the deferrals were made. If such deferrals cumulatively exceed the then-applicable dollar amount in Code section 457(b)(2) in the year that such amounts were deferred, then there will be no Underutilized Amount for that year.

(ii) To the extent that the Employer did not maintain a Code section 457(b) plan, no underutilized limitation is available to a Participant for that prior year.

(iii) After 2001, only deferrals to Code section 457(b) plans will be taken into account for the purposes of determining the Underutilized Amount.

**5.3 Age 50 Catch-Up Contributions.** The Applicable Dollar Amount described in Section 5.1 (a) is increased for a Participant who has attained age 50 or more by the end of the taxable year. The additional amount permitted by this Section is the applicable dollar amount set forth in Code section 414(v)(2)(B). This Section shall not be applicable for any taxable year in which Section 5.2 applies.

**5.4 Relationship to Other Plans.** An individual may participate in more than one Code section 457(b) plan. If an individual participates in two or more plans, any amount deferred under one plan reduces the amount that may be deferred under another, so that the total amount deferred under all such plans does not exceed the amount which could be deferred under a single plan. If an individual participates in two or more Code section 457(b) plans maintained by different employers, the maximum amount excludable from the gross income of the participant for a taxable year on account of amounts deferred under each plan cannot exceed the Applicable Dollar Amount, except to the extent that the catch-up limitation permitted under Section 5.2 or Section 5.3 applies. Determinations under this Article 5 involving multiple eligible plans will be made in accordance with the Regulations under Code section 457.

**5.5 Distribution of Excess Deferrals.** Any Excess Deferral with respect to a Participant for a taxable year resulting from this Plan's failure to apply the limitations of this Article 5 will be distributed to the Participant, with allocable net income, as soon as practicable after the Plan determines that the amount is an Excess Deferral.

## Article 6

### Investments

6.1 **Investment of Plan Assets.** Deferred Compensation and Eligible Rollover Distribution amounts shall be deposited in the Investment Contract(s) and shall be invested thereunder in such manner as directed by the Participant or Beneficiary to whose account such amount is credited. The Administrator or its designee shall furnish to Participants and Beneficiaries a written description of the investment choices made available under the Investment Contract(s) and instructions concerning how they may direct the investment of their Accounts among the investment choices provided. Participants and Beneficiaries may change their investment directions in such manner and at such times as announced by the Administrator or its designee. If a Participant or Beneficiary fails to provide proper investment directions for his or her Account, the Administrator may, but shall not be required to, direct the investment of such Account.

6.2 **Adjustments to Accounts.** All interest, dividends, charges for premiums and administrative expenses, and changes in value due to market fluctuations applicable to each Account shall be credited or debited to the Account as they occur or such other reasonable times determined by the Administrator.

6.3 **Plan Assets Held for Exclusive Benefit of Participants.** All assets of the Plan, including all Deferred Compensation and Eligible Rollover Distribution Amounts, property and rights purchased with such amounts, and all income attributable to such amounts, property or rights, shall (until made available to the Participant or Beneficiary) be held in a trust, custodial account or annuity contract described in Code section 457(g) for the exclusive benefit of Participants and their Beneficiaries.

## Article 7

### Distribution of Accounts

7.1 **Payment of Deferred Compensation.** Upon a Participant's severance from employment with Employer or death, the Participant's Account shall be payable as a Retirement Distribution (Sections 7.2 through 7.4, below) or as a Death Benefit Distribution (Sections 7.5 through 7.6, below), subject to the provisions of the Plan. In addition to any other provisions of the Plan, any Retirement Distribution or Death Benefit Distribution shall conform to the applicable requirements of Code sections 457(d)(2) and 401(a)(9) and the Regulations issued thereunder.

7.2 **Retirement Distribution.** Upon a Participant's severance from employment with Employer, the Participant shall be entitled to receive his or her Account under any Payout Option, including a single sum distribution, that satisfies the provisions of the Plan. Subject to Section 7.3 below, a Retirement Distribution shall commence as of the date elected by the Participant. Any irrevocable election of a benefit commencement date made by a Participant or Beneficiary prior to January 1, 2002 and defaulted distributions (other than a defaulted distribution to an annuity option) may be voided at the election of the Participant or Beneficiary.

7.3 **Required Beginning Date.** Consistent with the requirements of Code section 401(a)(9)(C), a Retirement Distribution shall begin not later than April 1 of the Year following the Year during which the Participant attains age 70½, or following the Year during which the Participant has a severance from employment with Employer, whichever occurs later (or the other date required or any other date permitted by Regulations under Code section 401(a)(9)).

7.4 **Required Distribution Amounts.** Any Retirement Distribution shall be made according to a Payout Option that provides, according to Regulations under Code section 401(a)(9) that:

(a) the entire Account will be distributed over the lives or over a period not extending beyond the life expectancy of the Participant and his or her designated Beneficiary, and

(b) the amounts payable with respect to the Participant will be paid at times which are not later than the times required by Code section 401(a)(9)(G) (relating to incidental death benefits).

7.5 **Death Benefit Distribution.** Upon the Participant's death before a distribution has begun under Section 7.2 above (or upon the "primary" Beneficiary's death before a distribution to him or her has begun), each Beneficiary shall be entitled to receive his or her separate account under the Participant's Account under any Payout Option that satisfies the provisions of the Plan. Subject to Section 7.6 below, a Death Benefit Distribution shall commence as of the date elected by the Beneficiary.

7.6 **Required Beginning Date and Distribution Amounts.** Any Death Benefit Distribution shall satisfy the applicable requirements provided below:

(a) *If the Beneficiary is the surviving Spouse*, the distribution shall begin not later than the last day of the Year after the Year in which the Participant would have attained age 70½ (or any later date that may be permitted by Regulations under Code section 401(a)(9)), and the entire Account shall be distributed, in accordance with Regulations under Code section 401(a)(9), over the life or over a period not extending beyond the life expectancy of the Spouse.

(b) *If the Beneficiary is not the surviving Spouse*, the distribution shall begin not later than the last day of the Year after the Year in which the Participant's death occurs (or any later date that is permitted by Regulations under Code section 401(a)(9)), and the entire Account shall be distributed, in accordance with Regulations under Code section 401(a)(9), over a period not extending beyond the life expectancy of the Beneficiary.

7.7 **Hardship Distribution.** If the Participant is faced before his or her severance from employment with Employer with an unforeseeable emergency that is approved by the Administrator as meeting the requirements of Section 7.8 below, the Participant shall be entitled to receive a distribution (as a cash lump sum) of the amount determined by the Administrator to be the amount that is reasonably needed to satisfy the emergency need.

7.8 **Definition of Unforeseeable Emergency.** An unforeseeable emergency means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent of the Participant (as defined by Code section 152(a)), 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 need to send the Participant's child to college or the desire to purchase a home shall not be considered an unforeseeable emergency. The determination as to whether an unforeseeable emergency exists shall be based on the facts of each individual case.

A Hardship Distribution shall not be paid to the extent that the financial hardship is or may be relieved through reimbursement or compensation by insurance or otherwise, by borrowing from commercial sources on reasonable commercial terms to the extent that this borrowing would not itself cause a severe financial hardship, by cessation of deferrals under the Plan, or by liquidation of the Participant's other assets

(including the assets of the Participant's Spouse and minor children that are reasonably available to the Participant) to the extent that this liquidation would not itself cause severe financial hardship.

7.9 **Life Expectancy.** Any determination of life expectancy for the purposes of the Plan shall be made by using the unisex tables specified in Regulations under Code sections 401(a)(9).

7.10 **Distribution to Minor or Incompetent Beneficiary.** If a distribution is to be made to a minor Beneficiary or to a Beneficiary that the Administrator finds to be unable to care for his or her affairs, the Administrator, in its sole discretion, may direct (if no claim has been made by a duly appointed representative) that any payment(s) be made to the legal guardian of the Beneficiary, or if none, to a parent of the Beneficiary or a responsible adult with whom the Beneficiary maintains his or her residence, or to the custodian for the Beneficiary under the State Gift to Minors Act, or to any person determined by the Administrator to be a proper recipient for the Beneficiary. This payment(s) shall be in full satisfaction of all claims.

7.11 **Inability to Locate Payee.** If a distribution under the Plan cannot be paid because the payee cannot be located, the Administrator shall delay payment for the time provided by the State Unclaimed Property Law and upon the expiration of that time shall pay over any amount as directed by the law.

7.12 **Dispute as to Proper Payee.** If a dispute arises as to the proper payee of any payment(s), the Administrator, in its sole discretion, may withhold or cause to be withheld any payment(s) until the dispute is finally determined by a court of competent jurisdiction or is settled by all the parties concerned.

7.13 **Small Balance Distributions.** Upon proper written request to the Administrator, a Participant may elect to receive a small balance distribution, payable in a lump sum, if the value of the Participant's Account is \$5,000.00 or less, and the Participant has not deferred any amount to the Plan for a period of two years prior to the distribution. A Participant may take a small balance distribution under this Section only once while a Participant in the Plan.

7.14 **Plans Transfers and Eligible Rollover Distributions.**

(a) If a Participant terminates employment with Employer and accepts employment with another employer which maintains an eligible deferred compensation plan (as defined in Code Section 457(b)) and the new employer's plan accepts transfers, the Participant may transfer his or her Account from the Plan to the plan maintained by the new employer.

(b) If Employer offers an eligible deferred compensation plan (as defined in Code Section 457(b)) other than this Plan and such other plan accepts transfers, the Participant may transfer his or her Account from this Plan to the other Plan. The Participant's election to make such a transfer shall be filed with the Administrator.

(c) Transfers from other eligible deferred compensation plans (as defined in Code Section 457(b)) to this Plan will be accepted at the Participant's request, if such transfers are in cash or non-annuity products currently offered under the Plan. Any such transferred amount shall not be subject to the limitations of Article 5, provided however, that the actual amount deferred during the calendar year under both plans shall be taken into account in calculating the deferral limitation for that taxable year. For purposes of determining the limitations set forth in Section 5.2, years of eligibility to participate in the prior plan and deferrals under that plan shall be taken into account.



(d) The Plan may receive an Eligible Rollover Distribution on behalf of a Participant from an Eligible Retirement Plan provided the Participant demonstrates to the Administrator's satisfaction that the amount is a qualifying Eligible Rollover Distribution under Code Sections 402(c)(4), 403(a)(4), or 408(d)(3).

(e) Subject to Section 7.3 above, a Participant may elect at the time and in the manner prescribed the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Participant, provided the Participant presents to the satisfaction of the Administrator a letter of acceptance or other written acknowledgment from the accepting plan that it is an Eligible Retirement Plan qualified to accept the Eligible Rollover Distribution. For distributions made on or after January 1, 2008, a Participant may elect to roll over directly an Eligible Rollover Distribution to a Roth IRA described in Code Section 408A(b).

(f) A Participant may use all or any portion of his or her Account as a direct trustee-to-trustee transfer to a Retirement System to purchase permissive service credit or for the repayment of service credits, provided that (1) the Retirement System permits such a transfer, and (2) the Participant demonstrates to the Administrator's satisfaction that the transfer is to a defined benefit governmental plan (as defined in Code Section 414(d)) and the transfer is permissible for the purchase of service credit (as defined in Code Section 415(n)(3)(a)) or for the repayment of service credits permissible by Code Section 415(k)(3).

(g) For distributions on or after January 1, 2010, a non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution must otherwise satisfy the definition of an Eligible Rollover Distribution. If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover. If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E). A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Regulations and other IRS guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Regulation Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

#### **7.15 Loans to Participants.**

(a) The trustee, custodian or issuer of an annuity contract holding legal title to the assets of the Plan may make loans to Participants and Beneficiaries under the following circumstances: (1) loans shall be made available to all Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall bear a reasonable rate of interest; (3) loans shall be adequately secured; (4) loans shall provide for periodic repayment over a reasonable period of time; (5) the minimum loan amount, if any, shall be specified in the participant loan program referenced in Subsection (d) below; and (6) no loan shall be made to a Participant or Beneficiary who has an outstanding loan from the Plan at the time.

(b) Loans made pursuant to this Section (when added to the outstanding balance of all other loans made by the Plan to the Participant) may, in accordance with a uniform and nondiscriminatory policy established by the Administrator, be limited to the lesser of:

(1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or

(2) one-half (1/2) of the present value of the non-forfeitable accrued benefit of the Participant under the Plan. For purposes of this limit, all plans of the Employer shall be considered one plan.

(c) Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a "principal residence" of the Participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years. For this purpose, a "principal residence" has the same meaning as a "principal residence" under Code Section 1034. Loan repayments may be suspended under this Plan as permitted under Code Section 414(u)(4).

(d) Any loans granted or renewed shall be made pursuant to a Participant loan program. Such loan program shall be established in writing and must include, but need not be limited to, the following:

- (1) the identity of the person or positions authorized to administer the Participant loan program;
- (2) a procedure for applying for loans;
- (3) the basis on which loans will be approved or denied;
- (4) limitations, if any, on the types and amounts of loans offered;
- (5) the procedure under the program for determining a reasonable rate of interest;
- (6) the types of collateral which may secure a Participant loan; and
- (7) the events constituting default and the steps that will be taken to preserve Plan assets.

Such Participant loan program shall be contained in a separate written document which, when properly executed, is hereby incorporated by reference and made a part of the Plan. Furthermore, such Participant loan program may be modified or amended in writing from time to time without the necessity of amending this Section.

(e) Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this Section, then the loan default will be a distributable event to the extent permitted by the Code and Regulations.

## Article 8

### Miscellaneous Provisions

8.1 **Amendment of Plan.** Ingham County may at any time amend the Plan. Any amendment shall not reduce the amount credited to any Account as of the date of the amendment, and shall not impair the rights of any person to any Account, except to the extent required by law. The Administrator shall give Participants notice of any Plan amendment.

8.2 **Termination of Plan.** Ingham County reserves the right to terminate the Plan at any time by action of its Board, subject to any collective bargaining obligations. Upon termination of the Plan, all Accounts shall be paid out to Participants and Beneficiaries as soon as administratively practicable.

8.3 **Anti-alienation.** Except as provided in Sections 7.15 and 8.4, Accounts shall not be subject to assignment or alienation, garnishment, attachment, transfer or anticipation, execution or levy, or other encumbrance of any kind, or transfer by operation of law in the event of a divorce or marital separation or of a bankruptcy or insolvency, except to the extent otherwise required by law. Except as provided in Sections 7.15 and 8.4, a Participant or Beneficiary shall not have any right to commute, sell, assign, pledge, transfer, or otherwise convey, use, or encumber any right to receive any payments under the Plan, which payments and rights are expressly declared to be non-assignable and non-transferable.

8.4 **Recognition of Approved Domestic Relations Orders.** In accordance with Code section 414(p)(1), as modified by Code section 414(p)(11), a Participant's benefit may be the subject of a domestic relations order between the Participant and an alternate payee (as defined in Code section 414(p)(8)) if the order is determined to be a Qualified Domestic Relations Order. The Administrator shall adopt reasonable procedures to determine the qualified status of domestic relations orders and to administer the distributions thereunder. Distributions may be made immediately to an alternate payee pursuant to a qualified domestic relations order before the date on which the Participant attains the earliest retirement age, as defined in Code section 414(p)(4)(B). Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a Qualified Domestic Relations Order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.

8.5 **Governing Law.** This Plan is established with the intent that the Plan shall satisfy the requirements of an "eligible deferred compensation plan" under Code section 457(b) maintained by an eligible employer, as defined in Code section 457(e)(1)(A). The provisions of the Plan shall be interpreted whenever possible in conformity with the requirements of applicable provisions of the Code. Where the applicable law (including but not limited to, the Code) governing the Plan is amended, modified, or interpreted through subsequent legislation or rulings or decisions, the Plan's provisions shall be construed as incorporating any such amendment or modification or interpretation of the applicable law.

This Plan shall satisfy the requirements of any applicable laws of the State of Michigan. This Plan shall be construed and enforced under the laws of the State of Michigan.

8.6 **Headings.** The headings and subheadings and captions and numbering of provisions of the Plan have been inserted merely for convenience of reference, and in no way define or limit the scope or intent of any provisions of the Plan, and are to be ignored in any construction of the provisions of the Plan.

8.7 **Information to be Provided by Participants and Beneficiaries.** Participants and Beneficiaries shall provide the Administrator with any information reasonably required by the Administrator. A Participant or Beneficiary or other person shall not have any rights to or otherwise be entitled to the payment of any Account under the Plan unless such information has been provided to the Administrator.

8.8 **Receipt and Release.** Any payment(s) or any agreement to make payment(s) shall, to the extent of the payment(s) or agreement, be in full satisfaction of all claims. The Administrator may (in its sole discretion), as a condition precedent to making or causing to be made any payment(s), or agreement to make payment(s), or transfer (under Section 7.14 above), require any person or entity to execute a receipt and release.

8.9 **Separability.** If any provision of the Plan is held invalid for any reason, the remaining provisions of the Plan shall be construed and enforced as if the invalid provision had not been included in the Plan, unless such a construction of the Plan would be clearly contrary to the intent of the Plan.

8.10 **Military Service.** Notwithstanding any provision of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code section 414(u), effective as of December 12, 1994. For Years beginning on or after January 1, 2009, (i) an individual receiving a differential wage payment, as defined in Code Section 3401(h)(2), shall be treated as an Employee of the Employer making the payment, and (ii) the differential wage payment shall be treated as Includible Compensation. Notwithstanding the preceding sentence, for purposes of the distribution provisions of Article 7 of the Plan, a Participant is treated as having a severance from employment with the Employer during any period the Participant is performing service in the uniform services described in Code Section 3401(h)(2)(A). Effective for Years beginning on or after January 1, 2009, if a Participant elects to receive a distribution by reason of severance from employment, death or disability, the Participant may not make a Contribution to the Plan during the six-month period beginning on the date of the distribution. In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals related to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**INGHAM COUNTY**

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

Its: \_\_\_\_\_

**INGHAM COUNTY MEDICAL CARE FACILITY**

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

Its: \_\_\_\_\_