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Governor



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Deferred Compensation Program**
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COMMITTEE

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Action and Summary Minutes of the Meeting of the
DEFERRED COMPENSATION COMMITTEE
Blasdel Building
209 E. Musser Street, Room 105
Carson City, Nevada 89701
December 13, 2011

COMMITTEE MEMBERS, STAFF and ATTORNEY PRESENT:

Rex Reed, Chair
Jim Barnes, Vice Chair
Brian L. Davie
Andy MacKay
Karen Oliver
Tara Hagan, Executive Officer
Jenny Potts, Secretary
Cameron Vandenberg, DAG

OTHERS PRESENT:

Lyra Ambrose, ING (by phone)
Bishop Bastien, ING
Howard Biggs, Arnerich Massena
Robert Biló, Nationwide
Roger Bremner, Participant
John Crawford, Retired
Michael Hackett, Hartford
Robin Lindstedt, Hartford (by phone)
Brian Merrick, ING
Julie Miramontes, Nationwide
Jake O'Shaughnessy, Arnerich Massena
Steve Platt, ING
Carlos Romo, Retired (by phone)
Bob Trenerry, Hartford
Tom Verducci, Hartford
Steve Watson, Hartford

These minutes are a draft subject to approval by the Deferred Compensation Committee at the next regularly scheduled meeting. The agenda for this meeting was posted according to the Nevada Open Meeting Law and was sent to groups and individuals as requested.

I. OPENING REMARKS ([Audio: 00:00:30](#))

Staff opened the meeting at approximately 9:00 a.m. and welcomed everyone to the 2012 Deferred Compensation Planning Session. Staff reviewed the Plan's mission statement. ([Exhibit A, Page 1](#))

II. WELCOME NEW MEMBER ([Audio: 00:05](#))

Chair Reed introduced and welcomed Ms. Karen Oliver to the Committee.

III. PUBLIC COMMENT ([Audio: 00:06](#))

Dr. Carlos Romo addressed the Committee with his testimony. ([Exhibit B](#))

Mr. Steve Watson addressed the Committee regarding the Administrator Request for Proposal (RFP) process. He stated in talking to several retired NDC members he noted members prefer multiple vendors. He stated participants would prefer the Committee add a third low-cost, low-touch alternative to the two current insurance companies. Mr. Watson stated participants preferred having the option to select a variety of investment options and would prefer the Committee not limit the investment options available. ([Audio: 00:09](#))

Participant Mr. Roger Bremner addressed the Committee. Mr. Bremner thanked the Committee for adhering to the Plan's mission statement. He stated he is pleased with how the Program has grown since its inception. He noted that he and other retirees are pleased with the Hartford General Account and suggested that the Committee not limit the investment choices or providers and keep the Hartford General Account. ([Audio: 00:12](#))

Mr. Andy MacKay noted that he received an email from participant Mr. Todd Rich who is the Deputy Director of the Department of Business and Industry. Mr. MacKay stated that Mr. Rich noted that due to the addition of staff, particularly the work of Tara Hagan and staff, NDC has stepped up the professionalism which is evident in the materials and outreach initiatives. Mr. MacKay stated Mr. Rich noted NDC is vital to employees having a well funded retirement.

IV. FIDUCIARY RESPONSIBILITIES (ARNERICH MASSENA) ([Audio: 00:16](#))

Arnerich Massena (AM) Representatives presented the fiduciary roles and responsibilities. The Representative reviewed the fiduciary roles and responsibilities for supplemental retirement plan committees such as NDC. AM noted it will explain the Employee Retirement Income Security Act (ERISA) law with regards to the fiduciary duties in Internal Revenue Code (IRC), Section 404. ([Exhibit A, Arnerich Massena Presentation, Pages 1-21.](#))

AM Representatives noted that although NDC is not subject to ERISA law, it is subject to Section 404 of ERISA and should note ERISA law as best practice for the Plan. AM stated that making decisions in the best interest of plan participants and their beneficiaries, complying with applicable federal law, and effectively constructing a Plan to assist employees in creating their investment portfolios is a fiduciary requirement for each NDC Committee Member.

AM Representatives discussed ERISA, Section 404(c) or 'safe harbor regulations' which can shield fiduciaries from liabilities if the Plan is constructed properly, such as defaulting participants into target date funds and not stable value funds. AM noted, as an example, fiduciaries are not absolved from liability if they choose to default participants into a stable value fund but are absolved if they are defaulting into an age-appropriate target date fund. The Representative noted that fiduciaries should be more concerned about process than outcome. AM noted that ERISA law requires fiduciaries to be prudent experts which is often why committees hire third-party investment advisors, such as Arnerich Massena. AM noted that committees are not absolved of their fiduciary duties by hiring a third-party consultant, as members are still held to the prudent expert standard. The Representatives stated it's prudent for the Committee to inquire as to AM's process in monitoring investment options and the process during an investment selection search process.

Mr. MacKay inquired as to the processing, approving and/or denying of the unforeseen emergency withdrawals and whether this task is completed by a fiduciary. The Representative stated that in the general sense, there are federal rules which a record keeper will utilize to allow for the approval or denial of an emergency withdrawal and then allow any appeals to be decided by the committee, who are the fiduciaries.

Chair Reed asked Deputy Attorney General (DAG) Ms. Cameron Vandenberg if the Committee Members carry a dual position as a trustee. Ms. Vandenberg indicated that this is correct.

AM Representatives discussed the duties of a fiduciary, including the requirement that all decisions must be based solely in the best interest of the participants and their beneficiaries. The Representative noted that a fiduciary cannot have a personal interest or gain in a decision that is made on the behalf of participants. AM noted fiduciaries must also have a prudent level of knowledge regarding the Plan, investments, federal regulations and other requirements. AM stated fiduciaries must seek to defray participant costs when possible, such as lowering share classes or fees when administratively possible. AM cited the Wal-Mart employee class action suit which awarded participants additional funds in their retirement plan due to the fact that Wal-Mart, as the fiduciaries should have moved sooner to the lower priced share class option in its retirement plan.

AM Representatives noted a prudent expert needs enough fund choices to assist participants in diversifying and federal regulations defines a 'broad' array of investment options as three (3) options. AM stated the Plan must follow its investment policy and any applicable laws. AM discussed the appropriate number of investments for the Committee's consideration and noted research shows too many options are overwhelming to participants and employees which may lead to confusion and frustration. The Representative noted the more investment options available to participants; the more difficult it is for participants to be knowledgeable about all investments available. He also noted it's difficult for committees to effectively monitor and oversee too many options. The Representative stated the average plan menu size, as noted by record-keeper surveys contains, 17 – 19 investment options which consider the target date suite of funds as one fund.

Chair Reed asked the AM Representative if the survey data which indicated 17 – 19 investment options as the average, used primarily supplemental retirement plans or primary retirement plans in the survey pool. The AM Representative stated it is a combination of both but that all were participant driven defined contribution plans. AM noted that the greater the number of investment options, the less ability a fiduciary has to control and reduce the costs in the Plan which is a key fiduciary requirement. AM stated that committees generally reduce the investments in the core option and add the self-directed brokerage option which allows a participant to choose almost any investment option.

Mr. MacKay asked the AM Representative if the average number of investment options considers each provider's investment platform separately, such as 20 options and 20 options or would this be considered 40 options. The AM Representative stated in the example provided the number would be 40 options. He stated when participants request a multiple vendor or record-keeper preference they are really requesting a wider array of investment choices, due to the fact that participants don't know or care what type of computer system a firm is using to record-keep the Plan. He also stated in today's market all competitive record-keepers offer an open architecture investment platform which does not limit the plan sponsor in selecting any investment options. ([Audio: 00:50](#))

The AM Representative noted the use of investment tiers in communicating the Plan is effective in increasing participant understanding and usage. He noted tiers can be as simple as 'invest for me' which allows participants to be directed into a target date fund based on age without being shown any other fund options or 'invest on my own' which allows an individual to choose and manage his own account. He noted 'Tier 1' is the target date suite of funds, 'Tier 2' is the plan's suite of both passively and actively managed funds in the core investment areas which allows a participant to build a portfolio creating the funds chosen by the Committee and 'Tier 3' is the brokerage account options which provides nearly any investment option but does not require oversight of these funds by the Committee.

The AM Representative noted Committee members should be aware of federal regulations and any discrepancies in the Plan document which may potentially violate federal law. He noted that although members do not need to be experts in federal law, they do need a good understanding of the federal rules and regulations and should be able to note where the plan document may be in violation of federal statute.

The AM Representative discussed the personal liability of each Committee member in their role as Plan fiduciary. He discussed the possibility of litigation against the Committee for its decisions. He noted failure to become a 'prudent expert', failure to monitor investment options, failure to act on necessary decisions and failure to ensure the plan is not engaging in prohibitive transactions would be considered a breach of fiduciary responsibility and could lead to personal liability against each Committee member.

Chair Reed asked the AM Representative if members are liable for the penalty taxes on prohibitive transactions. The Representative noted the Committee would be responsible for monitoring and communicating the penalty taxes which may be associated with a prohibitive transaction and failure to do so could result in each member being personally liable for his or her actions or failure to act.

Mr. Davie asked the AM Representative if there is a limit to a member's amount of personal liability. The Representative stated that this is a case by case basis. The AM Representative asked Staff if the Plan has any fiduciary bonding or fidelity bonding. Staff will provide additional information to the Committee on this issue. The Representative stated if a member is fraudulent or negligent in his decisions, he would not be covered by the employer for his actions. The AM Representative noted the process must be prudent which doesn't mean the Committee must follow participants' preferences. He noted the Committee may decide it's a more prudent decision and have a documented process which clearly shows advantages to participants with a move to one provider, such as lower investment option fees and greater simplification which may not be the popular decision amongst participants but does not create a liability for members. The Representatives noted the decisions made by the Committee must be done in the best interest of the participants and any political donations or other incentives provided to members by bidders would be considered a breach of fiduciary duty and would create liability for the members.

Mr. Davie noted concern with some Committee members publically stating a preference for the two-provider system prior to the start of the request for proposal (RFP) process and questioned if it's prudent for fiduciaries to publically state their preferences. The AM Representative noted a member may express an opinion publically; however, after the process the member may change his or her mind. He also noted the Committee must agree completely on the final decision and members must be able to state supporting reasons for their decisions.

Mr. Davie stated he does not want to limit any members from expressing their opinions. He noted that he wants to draw the line between having a bias in a certain direction which may conflict with the evidence provided by the RFP. The AM Representative noted preferences and biases must be weighed and considered throughout the process.

The AM Representative questioned how the RFP can be crafted to assist the Committee in its decision and final determination. He questioned the merits of a single versus multiple vendors in terms of plan costs and servicing and the desire to ask the right questions to assist the Committee during the process.

The AM Representative discussed delegation of fiduciary responsibilities and the fiduciary standards. He noted the Committee will want to ensure the provider indemnifies the Committee for decisions participants make in the self-directed brokerage option. He also noted the Committee wants to ensure the vendors are providing the services which are required under their contracts. (Audio: 01:21)

The AM Representative discussed the importance of process driven outcomes noting that the Committee cannot control the market but can control the process and the steps it takes regarding investment and other plan decisions. He noted in federal law committee's are not judged by performance but by process. He noted a Committee must also act on the information it is provided to ensure limited liability.

The AM Representative stated that documenting the decisions made and information provided is essential and this group does a great job. He noted the information is readily available and in various formats.

Mr. Davie expressed regret from the RFP process five years ago which had an expedited timeframe to choose and vet investment options. He noted each vendor had a suite of funds it recommended but based on his experience with this process he prefers the *Open Architecture* which Arnerich is recommending. The AM Representative noted Mr. Davie is hitting on the biggest flaw in a record-keeper RFP which is to request investment information or expertise from a firm which a plan is hiring for record-keeping services. He noted the Committee should always be selecting firms based on the administrative services or record-keeping services they will be providing to the plan sponsor and the participants.

V. NDC PLAN BACKGROUND – RECENT HISTORY (STAFF) ([Audio: 01:36](#))

Staff discussed the NDC Plan background and recent history.
([Exhibit A, NDC Presentation Pages 1-14](#))

Chair Reed asked the providers if the EZ enrollments are included in new hire packets. Chair Reed also inquired if company representatives are distributing the EZ enrollment forms. The ING representative noted a representative can distribute the forms, especially at group meetings; however, when a representative meets individually with participants he or she will use the traditional enrollment form. The ING Representative and Hartford representative stated they both receive a new hire list from Central Payroll and send each person on this list a mailing which includes the EZ enrollments form. The Hartford Representative also noted it does track the EZ enrollments and the representatives do carry the EZ enrollment forms when meeting with employees.

Mr. Davie asked if the new enrollments are tracked by age. The ING Representative and Hartford Representatives stated they can provide the demographic information to staff.

VII. DISCUSSIONS AND CONSIDERATIONS FOR 2012 RECORD-KEEPING RFP (STAFF & ARNERICH MASSENA) ([Audio: 02:11](#)) ([Exhibit A, NDC Presentation Pages 15-21](#))

Staff facilitated a discussion regarding considerations for 2012 RFP process and questionnaire.

The AM Representative noted the importance of the plan brand and engaging different constituencies. He noted a plan needs to consider what value the brand needs to bring to engage different age groups.

Mr. Davie stated he appreciated the idea of communicating the Plan and its investments using the 'tier' system. He noted when he began in the Plan the investments did seem overwhelming and stated he believes we can simplify the Plan for participants by communicating with them based on a participant's desire to manage his own account or not manage his own account.

Mr. Davie stated he would like to see the Plan use social media as an additional method for communicating to participants and employees. Staff noted it's important for the Committee to consider the various methods in which the Plan communicates and partners with the vendor and the RFP is a great way to explore new methods which can add value to participants and the Plan.

Mr. MacKay asked Staff what the percentage of survey respondents who are not participants indicated the Plan was too confusing. Staff stated 22% of respondents indicated the Plan was too confusing and 73% were not currently participating because they couldn't afford it.

Chair Reed stated that he was concerned about how the Committee scores the RFP and wants to prevent members from skewing the results. Staff noted in conversations with Purchasing it has definitely seen votes which were skewed and although appeals have been based on this practice, Purchasing stated skewed votes have never changed the outcome of the RFP final decision. Staff

also noted Purchasing recommended that the Committee not have knowledge of the weightings of the RFP which Staff noted doesn't seem practical.

Mr. Davie asked the AM if it has knowledge of standard weightings in record-keeper RFPs. The AM Representative noted that there are a variety of ways to structure an RFP but most always the plan sponsor does weight the categories and does so based on its plan's needs and composition. Mr. Davie stated that the Committee must know and determine the categories and weighting for each. The AM Representative noted the importance of each category which includes *Organizational and Financial Strength*. He noted this category ensures each bidder has relevant experience in similar sized governmental plans and not many firms will have experience with 457(b) plans the size of Nevada. He stated this category should be considered mandatory. He noted that some firms will have one or two plans of similar size on its books and other firms will have hundreds of plans. He stated the Committee should consider which firm it's more comfortable with administering the Nevada plan, one with limited experience or one who administers many similarly sized plans.

The AM Representative noted the importance of the *Participant Services* category which is nearly always has an above average rating. He stated this helps committees understand how a vendor will communicate with participants in a variety of methods and if its recordkeeping system is in line with the plan's needs. He stated *Open Investment Architecture* for plans such as Nevada is a minimum requirement to bid. He noted this allows the committee and the plan the ability to choose and manage investment options without the concern for vendor limitations.

The AM Representative noted *Fees and Expenses* is generally always weighted above average but noted caution in rating this category too high. He noted fees and expenses get weighed in context of *Participant Services* and *Plan Sponsor Services*. He stated committees should consider where these services add value for the participants and what participants are willing to pay for these services. He noted the importance of a record-keepers ability to message to participants, present information and to provide a robust technology platform.

Staff noted there may be a conflict between the Open Meeting Law and Procurement Law. Staff stated procurement statues require weightings not be made public yet Open Meeting Law requires all Board discussions be conducted in a public meeting. Chair Reed noted that this will need to be brought up with DAG Ms. Vandenberg and the Purchasing Division.

Chair Reed noted on page 20 there are 6 different categories of criteria for the RFP. Chair Reed questioned if any members objected to any of the categories being proposed. Chair Reed noted hearing none; he would recommend the Committee have a discussion on each category and consider whether it should be considered below average, above average or average. He stated that the weighting based on 100% for each category is 16.6%.

Mr. Davie noted based on the comments by AM; he would recommend *Participant Services* and *Fees and Expense* be considered above average. He also stated *Organizational and Financial Strength* should be weighted average or above average due to issues surrounding firms' credit ratings over the past several years. ([Audio: 02:25](#))

Mr. MacKay noted the plan could be negatively impacted if the Committee chooses a company which is perceived to have lower credit ratings; however, he continued should the plan move away from a general insurance option, credit ratings would be less important. Mr. Barnes stated he agreed with Mr. Davie regarding the importance of financial strength and noted he thought it should be weighted above average. Chair Reed noted he also agreed with Mr. Davie.

The AM Representative noted the RFP will contain clarifying questions to help assist the Committee in better understanding the issues around a category. He noted under the *Organizational and Financial Strength* category, the RFP will contain questions which relate to a firm's experience with governmental plans similar to Nevada. He stated the financial strength component would depend on whether the Committee chooses an insurance general account type product.

Mr. Davie noted it is important to have a history of the credit ratings of the bidders for the past 10 years. Mr. Davie thinks it is important to see where the providers have been in the past with their credit ratings.

Chair Reed requested that the *Participant Services* should be graded above average. Vice Chair Barnes thought this is one of the most important categories. The AM Representative agreed with this as well.

Chair Reed requested that the *Investment Open Architecture* should get a less than average rating because it should be common place for a firm to accommodate any fund option the Committee should choose. Mr. Davie agreed with Chair Reed that *Open Architecture* should have a lower than average rating. He noted the AM representative stated this is generally a requirement to bid and most firms with the required experience will be able to allow for any investment option. He stated providing the Committee with maximum flexibility in selecting options is important and noted the concern with the current issues which are preventing the Committee from moving away from an option due to a provider's record-keeping limitations. ([Audio: 02:35](#))

The AM Representative noted the RFP will not be requesting the firms provide a recommended investment platform but simply verify that the firm can provide the Plan with any mutual fund in the marketplace. He noted questions will ask if the firm can be Open Architecture and does it require a certain amount of proprietary funds. He stated if a firm must have proprietary funds, their bid score would most likely be lowered due to this restriction. The Representative noted the requirement for proprietary funds may increase the cost to Participants and the Committee needs to ensure these costs are fully disclosed in the RFP process.

Mr. MacKay asked the AM Representative if the plan pays for investment performance or record-keeper performance. The Representative noted investment costs should be independent and should have nothing to do with the record keeper. The Representative noted the record-keeping costs should be value driven and the fees for all bidders should be in a fairly narrow range. He stated if a firm falls out of the range it generally means it does not have experience with similar size plans and would not be a suitable firm. He noted it's important to segregate investment fees from record-keeping costs, especially if proprietary funds are mandatory. He noted the requirement to have proprietary funds means a firm needs additional revenue through the investment options and the record-keeping costs are subsidized by the proprietary fund products.

Mr. Davie suggested *Fees and Expenses* should be rated above average. Chair Reed and Vice Chair Barnes agreed with the above average rating for this category.

Chair Reed asked the AM Representative to define the category of *Plan Sponsor Services*. The AM Representative noted plan sponsor services are the technologies, data and reporting made available to the plan sponsor. The Representative noted that the Committee would not want a situation where the sponsor or its staff does not have adequate information to evaluate the plan.

Mr. Davie asked the AM Representative if they request submissions from the providers regarding certain information given to the governing boards during meetings in the RFP. The AM Representative noted that they generally request communication samples for both plan sponsor and participant services. He also noted they generally do a deeper dive on these services during the finalists' presentations.

Chair Reed recommended that the *Plan Sponsor Services* and *References* be weighted less than average. Vice Chair Barnes, Mr. MacKay, and Mr. Davie noted that the *References* should be rated less than average.

Mr. MacKay recommended bidding the Plan as a three-pronged approach, total plan assets, Hartford assets, and ING assets. He noted this will provide the Committee with apples to apples comparisons. Both Mr. Davie and Vice Chair Barnes agreed with Mr. MacKay's approach.

The AM Representative asked if each provider should be forced through the minimum requirements to bid on all three categories or approaches. The Representative noted if the Committee allows providers an option it may not be able to get at apples to apples comparisons. He noted the Committee is attempting to understand if there is a value in moving to a single provider and this is difficult to ascertain if the providers are not required to bid on all asset scenarios. Mr. Davie indicated that during the last RFP process the Committee did not force providers to bid on all scenarios and he

believes this should be a requirement. He noted not requiring this did make the comparison difficult and it did create some disparities in the bid comparison.

Mr. MacKay asked if the contract period will remain a 5-year contract and asked the AM Representative if a 5-year contract is standard or if the Committee should be looking at a different time period. The AM Representative noted it does see a reduction in some fees with a 7-year contract. Staff noted Nevada Revised Statute requires the Committee to conduct an RFP at least every 5 years.

VIII. 2012 NDC GOAL CALENDAR (STAFF) ([Audio: 03:03](#))

Staff presented the 2012 NDC goal calendar.

IX. PUBLIC COMMENT ([Audio: 03:03](#))

A. AM Representatives did not have any comments

ING Representative discussed an email regarding action taken by three rating agencies regarding ING's U.S. based insurance operations. The Representative noted all ratings remain in the 'good' and 'strong' category. He noted the action was a result of action ING took regarding a closed block of variable annuity business. He stated in order to adequately address the risk associated with the business it has set aside an additional \$1 billion of capital. Mr. Davie inquired as to the type of business ING closed. The Representative noted the business was both group and individual variable annuity business which guarantees a certain return to participants and due to the poor market performance the guarantees were beginning to become effective which may be costly to ING.

Chair Reed asked if ING has divested its U.S based insurance operations. The ING Representative noted ING has not yet issued an initial public offering (IPO) but is preparing for this action.

Mr. Davie asked Hartford to provide an update on the guarantee coverage with the insurance division. The Hartford Representative stated that they are still working on this and it is very close to submitting the information to the Division of Insurance. Mr. Davie asked if the process would be completed by the February meeting and the Hartford Representative indicated that it should be filed and completed by then.

Chair Reed noted for the upcoming year he would like a discussion on the loan provision, continued discussion on the Guaranty Association coverage for the Hartford General account, return to discussions regarding a separate account for the Hartford General Account assets which allows the Plan to own the assets, and discussions regarding 'open enrollment' as the concept seems contradictory to the goals of a supplemental plan.

B. Deputy Attorney General did not have any comments

C. No Public Comments

D. Staff thanked the Committee for taking the time to participate in the meeting and wished everyone a happy holiday season.

The meeting was adjourned at approximately 12.30 pm.

Respectfully Submitted:

Jenny Potts
Administrative Assistant

Approved by:

Tara Hagan
Executive Officer

LIST OF EXHIBITS

Exhibit A is the packet of informational items prepared by Staff for Committee members for the December 13, 2011 meeting and containing a Tab titled '2012 Goals'.

Exhibit B is participant Dr. Carlos Romo's Testimony.