

QUALIFIED REPLACEMENT BENEFIT ARRANGEMENT  
AND ADOPTION AGREEMENT

EFFECTIVE January 1, 2013

Polk County

**Purpose of this Publication**

Section 113.1 of the Administrative Code for the Texas County and District Retirement System establishes a qualified governmental excess benefit program in accordance with Section 415(m) of the Internal Revenue Code and as authorized under Section 845.504, Government Code. The program entitled as the "Texas County and District Retirement System Qualified Replacement Benefit Arrangement" is maintained solely for the purpose of providing for the payment of that portion of the annual retirement benefits that had been accrued by and would otherwise be payable with respect to a member of the Texas County and District Retirement System but for the limitation on the payment of benefits under Section 415(b) of the Internal Revenue Code of 1986, as amended.

**Definitions**

As defined under section 113.2, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) "Act" means the provisions of Texas Government Code, Title 8, Subtitle F, as amended from time to time, establishing the Texas County and District Retirement System.
- (2) "Arrangement" means the Texas County and District Retirement System Qualified Replacement Benefit Arrangement, as set forth herein and as amended from time to time.
- (3) "TCDRS" or "System" means the Texas County and District Retirement System, as established under the provisions of the Act.
- (4) "Benefit Recipient" means any individual who receives a retirement benefit from TCDRS as a Retiree or as a surviving beneficiary of a deceased Member or Retiree. The term may include an alternate payee of a deceased Member or Retiree.
- (5) "Benefit" means a retirement benefit accrued under the provisions of the Act.
- (6) "Board" means the Board of Trustees of TCDRS.
- (7) "Code" means the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent federal tax laws) and the regulations there under.
- (8) "Effective Date" means January 1, 2006, the effective date of the Arrangement.
- (9) "Eligible Member" means a Retiree or a deceased Member or Retiree with respect to an Employer, from and after the date the Employer adopts the Arrangement.
- (10) "Employer" means an Employer whose employees are Members of TCDRS with respect to retirement benefits paid by TCDRS under the provisions of the Act; provided that the Employer signs an adoption agreement in the form specified by the Board to adopt the Arrangement.

- (11) "Restricted Benefit" means the maximum Benefit permitted to be paid to a Benefit Recipient under the Retirement Plan of the Employer, as limited by Code Section 415, in accordance with Section 844.008 of the Act.
- (12) "Member" means any individual who accrues or has accrued a Benefit under the Act.
- (13) "Participant" means any Benefit Recipient with respect to an Employer who is eligible to participate in the Arrangement in accordance with Article 2.
- (14) "Retirement Plan" means the defined benefit plan established under TCDRS for employees of the Employer, and their beneficiaries, in accordance with the Act, and qualified under Code Section 401(a).
- (15) "Retiree" means a Member who receives a Benefit under the Act with respect to an Employer.
- (16) "Unrestricted Benefit" means the benefit that would be payable to a Benefit Recipient under the Retirement Plan of the Employer if the limits of Code Section 415 were not applicable in accordance with Section 844.008 of the Act.

### **Eligibility and Payments**

- (a) Eligibility to Receive Payments.

If, at the time an Eligible Member becomes a Retiree or dies or at any time thereafter, the Unrestricted Benefit of the Benefit Recipient under the Retirement Plan of the Employer exceeds the Restricted Benefit payable to the Benefit Recipient at that time, the Benefit Recipient shall become a Participant and shall be entitled to receive payments under this Arrangement, in accordance with the terms hereof, and may not waive or defer the receipt of such payments. A Benefit Recipient shall in no event become a Participant until the later of:

  - (1) January 1, 2006, the Effective Date of the Arrangement, or
  - (2) the effective date of the applicable Employer's adoption of the Arrangement.
- (b) Amount of Payments.

A Participant shall receive payments under this Arrangement equal to the difference between the Participant's Unrestricted Benefit and his or her Restricted Benefit, provided that the amount of payments so determined shall be subject to change and to such adjustments as TCDRS deems appropriate, from time to time. In no event shall a Participant be entitled to receive a payment under this Arrangement if such payment, when combined with other payments under this Arrangement and under the Retirement Plan of the Employer, would result in the Participant receiving total payments in excess of the Participant's Unrestricted Benefit.
- (c) Form and Timing of Payments.

Payments under this Arrangement shall be paid by the applicable Employer to each Participant at the time and in the form and manner as the System may direct. Any election made by an Eligible Member with regard to the distribution of Benefits under the System, including the designation of a named beneficiary, as defined in Section 841.001(4) of the Act, shall be equally applicable to and binding on such Eligible Member and on all persons who at any time have or claim to have any interest in connection with payments under this Arrangement.
- (d) Effect on TCDRS.

Any Benefit payable under the Retirement Plan of the Employer established under TCDRS shall be paid solely in accordance with the terms and provisions thereof and shall be subject to Section 415 of the Code and other applicable tax limitations; nothing in this Arrangement shall operate or be construed in any way to modify, amend or affect the Benefits payable there under.

- (e) **Tax Withholding.**  
All payments under this Arrangement shall be subject to and reduced by applicable federal, state and local income, payroll and other tax withholding requirements and all other applicable deductions required by this Arrangement or by law.
- (f) **Participation Determined Annually.**  
Participation in the Arrangement shall be determined annually for each plan year. In any plan year, benefits shall only be paid under the Arrangement to a Participant after the date in the plan year that the benefits paid to such person from TCDRS under the Retirement Plan of the Employer have reached the maximum annual benefit that can be paid by TCDRS under Code Section 415 for that plan year. The date the maximum annual benefit payment from TCDRS is reached is the beginning date of participation by the Participant for that plan year. The beginning date of a Participant's participation in the Arrangement may change from plan year to plan year as the amount payable under this Arrangement is predetermined. An individual's participation in the Arrangement will cease for any plan year or portion of a plan year for which the individual's Benefit is not limited by Code Section 415.
- (g) **No Election to Defer Compensation.**  
No election shall be provided at any time to a Participant or any other individual, directly or indirectly, to defer compensation under the Arrangement.

#### **Administration**

- (a) **Administrator.**  
TCDRS shall be the Administrator of the Arrangement and shall be responsible for the supervision and control of the operation and administration of the Arrangement, except as otherwise provided herein. Subject to the authority of the Board, TCDRS shall have the exclusive right and full discretion to construe and interpret the Arrangement, to establish rules and procedures for its operation and administration, and to decide any and all questions of fact, actuarial valuation, interpretation, definition or administration arising under or in connection with the administration of the Arrangement. The interpretation and construction of any provisions of the Arrangement by the Administrator and its exercise of any discretion granted under the Arrangement shall be binding and conclusive on all persons who at any time have or claim to have any interest whatever under this Arrangement.
- (b) **Contributions and Payments.**
  - (1) As soon as administratively feasible following the receipt of Employer contributions, TCDRS shall segregate from each Employer's contributions the portion of the contributions necessary to make the payments due to Benefit Recipients of that Employer for the next payment period and for any applicable expenses under this Arrangement. Notwithstanding the foregoing, if TCDRS determines, in its sole discretion, that the allocation of contributions to the Arrangement would jeopardize the actuarial soundness of the Retirement Plan of

the Employer, TCDRS shall cease to segregate contributions for the Arrangement and shall notify the participating Employer and affected Benefit Recipients.

- (2) Contributions segregated for payments and expenses under the Arrangement shall be separately accounted for and shall be used exclusively for payments and expenses under the Arrangement and shall not be commingled with any other assets of TCDRS.
  - (3) Within a reasonable period of time before each payment date, TCDRS shall distribute to each participating Employer the gross amount necessary, as determined by TCDRS, to satisfy such Employer's liability for amounts due on such payment date under the Arrangement.
  - (4) The Employer from whom the Eligible Member retired or died while a Member with respect to such Employer shall be solely responsible for paying any amounts received from TCDRS and due to the Participant under the terms of the Arrangement. TCDRS shall have no obligation to pay any amounts due under the terms of the Arrangement.
  - (5) The Employer shall be responsible for satisfying all tax withholding, payroll tax payments, other applicable tax payments and reporting requirements applicable to the Arrangement, if any, and shall be responsible for administering all payments due under the Arrangement.
- (c) **Plan Unfunded.**  
This Arrangement shall at all times be entirely unfunded within the meaning of the federal tax laws. Nothing contained herein shall be construed as providing for assets to be held in trust for the Participants. No Participant or any other person shall have any interest in any assets of TCDRS or any Employer by reason of the right to receive a payment under the Arrangement. Nothing contained herein shall be construed as a guarantee by TCDRS, any Employer, or any other entity or person that the assets of the Employer will be sufficient to pay any benefit hereunder.
- (d) **Appeal Procedure.**  
In the event a dispute arises between the Employer and the Administrator relating to the determination of the Administrator or the interpretation, operation or administration of this Arrangement, the Administrator's decision shall be final, conclusive and binding unless the Employer submits an appeal directly to the Board within 20 days from the date of notice of the decision, for consideration and action in accordance with the administrative review procedures set forth in 34 TAC Sections 101.19 – 101.23. The action of the Board, taken on its own motion or as the result of an appeal, is final, conclusive, and binding.

### **Amendment and Termination**

- (a) **Amendment and Termination of the Arrangement.**  
The Board reserves the right, in its sole discretion, to amend or terminate the Arrangement at any time and from time to time. By way of example, and not limitation, the Arrangement may be amended or terminated to eliminate all payments with respect to any Member or other individual who has not become eligible to participate in the Arrangement as of the date of such amendment or termination by reason of retirement or death in accordance with Section 113.3(a) of this chapter. In addition, an amendment or

termination may be retroactive to the extent that the Board deems such action necessary, in its sole discretion, to maintain the tax-qualified status of the System or the status of this Arrangement as a qualified governmental excess benefit arrangement as defined in Code Section 415(m) or to avoid jeopardizing the actuarial soundness of the Retirement Plan of the Employer.

(b) Termination of Employer's Participation.

- (1) An Employer may terminate its participation in the Arrangement at any time with the consent of and on terms established by the Administrator.
- (2) The Administrator may terminate the participation of an Employer if the Employer fails to comply with the rules established by the Board for the administration of the Arrangement as from time to time amended or modified, or fails to perform in accordance with the adoption agreement. The determination of an Employer's failure to comply and subsequent involuntary termination of participation is within the sole discretion and authority of the Administrator. The Administrator's decision is final, conclusive and binding unless timely appealed directly to the Board in accordance with Section 113.3(d) of this chapter.

(c) Participants.

If an Employer's participation in the Arrangement is voluntarily or involuntarily terminated, then any person who is a Benefit Recipient with respect to that Employer and who is a Participant in the Arrangement shall immediately cease such participation and shall be entitled to no benefits under this Arrangement and no benefits shall be paid or due to such Participant on or after the date of such termination. On the termination of an Employer in the Arrangement, the Employer shall have sole and complete responsibility and liability for paying any benefits that would otherwise be payable under the Arrangement with respect to its Participants, and the System and all other participating Employers shall have no responsibility or liability for any such benefits.

### **General Provisions**

(a) Applicable Law.

- (1) All questions pertaining to the validity, construction and administration of the Arrangement shall be determined in conformity with the laws of the State of Texas, except to the extent federal law preempts state law.
- (2) If any provision of the Arrangement or the application thereof to any circumstance or person is invalid, the remainder of the Arrangement and the application of such provision to other circumstances or persons shall not be affected thereby.

(b) Indemnification

To the extent allowed by law, an Employer electing to participate in the Arrangement must agree to indemnify, defend, and hold harmless the System, the employees of the System, the Board, and all other Employers participating in the Arrangement from and against any and all direct or indirect liabilities, demands, claims, losses, costs and expenses, including reasonable attorney's fees, arising out of or resulting from the Employer's participation in the Arrangement and/or the Employer's voluntary or involuntary termination of participation in the Arrangement. The agreement of the Employer to indemnify, defend and hold harmless survives the termination of the Employer's participation in the

Arrangement and the termination of the Arrangement.

- (c) **Nonalienation.**  
Benefits under this Arrangement shall not be subject to alienation or legal process, except to the extent permitted under Government Code, Chapter 804.
- (d) **No Enlargement of Employment Rights.**  
The establishment of the Arrangement shall not confer any legal rights upon any employee or other person for a continuation of employment, nor shall it interfere with the rights of the Employer to discharge any employee and to treat the employee without regard to the effect which that treatment might have upon the employee as a Participant in the Arrangement.
- (e) **Information Required By Arrangement.**  
Benefit Recipients, other individuals and Employers shall furnish to the Administrator such evidence, data and information as the Administrator considers necessary or desirable for the purpose of administering the Arrangement.
- (f) **Paying Benefits, Costs and Expenses from TCDRS Assets is prohibited.**  
No assets of the System shall be used directly or indirectly to pay benefits under the Arrangement or to pay any costs or expenses of administering the Arrangement. Expenses of administering the Arrangement may include expenses for professional, legal, accounting, and other services, and other necessary or appropriate costs of administration.

## **1. General Information**

Employer: Polk County

Employer Address: 101 W Church Ste 300 Livingston, TX 77351

Employer Contact: Judge John Thompson

Contact Phone: (936) 327-6813

Contact Email: john.thompson@co.polk.tx.us

## **2. Adoption of Arrangement**

The undersigned Employer hereby adopts the TCDRS Qualified Replacement Benefit Arrangement ("Arrangement") with respect to employees and former employees of Employer who are Members of TCDRS and with respect to benefits paid by TCDRS under the provisions of Government Code, Title 8, Subtitle F. The signatories represent that they have the authority to sign this Agreement and bind the Employer to the terms hereof. The signatories further represent that they and the Employer have taken all actions necessary to effectuate the terms of this Agreement, including but not limited to obtaining any approval required by the Employer's board or other governing body.

## **3. Agreement to be Bound by Terms of Arrangement**

Employer agrees to be bound by the terms of the Arrangement, as the same may be amended from time to time. Employer further agrees to be bound by all actions, decisions and interpretations of TCDRS or the board of trustees of TCDRS, in connection with the administration of the Arrangement.

## **4. Obligations of Employer**

Employer acknowledges that it shall be solely responsible for paying any amounts received from TCDRS and due under the terms of the Arrangement to the Benefit Recipients for the Eligible Members who retired from Employer or who died while a Member with respect to Employer.

Employer agrees to pay to each Participant on each payment date the amount remitted to Employer by TCDRS to satisfy the Employer's obligation to each such Participant, reduced by all applicable federal, state and local income, payroll and other tax withholding amounts, if any.

Employer acknowledges that it shall be solely responsible for satisfying all tax withholding, payroll tax payments, other applicable tax payments and reporting requirements applicable under the Arrangement, if any.

To the extent allowed by law, Employer agrees to indemnify, defend, and hold harmless the System, the employees of the System, the Board, and all other Employers participating in the Arrangement from and against any and all direct or indirect liabilities, demands, claims, losses, costs and expenses, including reasonable attorney's fees, arising out of or resulting from the Employer's participation in the Arrangement and/or the Employer's voluntary or involuntary termination of participation in the Arrangement. The agreement of Employer to indemnify, defend and hold harmless survives the termination of the Employer's participation in the Arrangement and the termination of the Arrangement.

It is understood that current funds have not been obligated by Employer for this indemnification.

Polk County AUTHORIZATION TO ADOPT

QUALIFIED REPLACEMENT BENEFIT ARRANGEMENT


With respect to the participation of Polk County in the Texas County & District Retirement System (TCDRS) for the 2013 plan year, this qualified replacement benefit arrangement was adopted in the Open Session Date.

**Certification**

I certify that the foregoing authorization concerning the participation of Polk County in the Texas County and District Retirement System Qualified Replacement Benefit Arrangement truly and accurately reflects the official action taken during a properly posted and noticed meeting on Date, 2012 by the Commissioners Court or Governing Board of Polk County as such is recorded in the official minutes.

County Judge or Presiding Officer

Date:

  
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8/14/12