



## **THE SAN BERNARDINO COUNTY 457(b) DEFERRED COMPENSATION PLAN**

Adopted by the Board of Supervisors, January 27, 1975  
Amendment approved by the Board of Supervisors, June 3, 1997  
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Amendment approved by the Board of Supervisors, April 23, 2013

The San Bernardino County 457(b) Deferred Compensation Plan became effective January 27, 1975 and constitutes a deferred compensation plan (section 457(b) of the Internal Revenue Code) for the exclusive benefit of eligible employees and their beneficiaries.

The present document represents a restatement in its entirety of the Plan provisions, effective April 23, 2013.

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## **ARTICLE I GENERAL**

### 1.01 Name

The name of this Plan shall be the San Bernardino County Deferred Compensation Plan, which was adopted on January 27, 1975, and thereafter amended from time to time (hereinafter called the "Plan").

### 1.02 Purpose

The primary purpose of this Plan is to permit Employees of the County and certain other persons as approved by the County of San Bernardino Board of Supervisors to enter into an agreement which will provide the deferral of a portion of their current Base Salary or Compensation, as appropriate, until retirement, termination of employment, death, or other event, in accordance with the provisions of section 457 of the Internal Revenue Code of 1986, with other applicable provisions of such Code, and in accordance with the statutes of the State of California.

It is intended that the Plan shall qualify as an eligible deferred compensation plan within the meaning of Code section 457(b), sponsored by the County of San Bernardino.

### 1.03 Disclaimer

The County does not and cannot represent or guarantee that any particular federal or state income, payroll or other tax consequence will occur by reason of participation in this Plan. Each Participant should consult with his or her own attorney or other representative regarding all tax or other consequences of participation in this Plan.

## **ARTICLE II DEFINITIONS**

Where the following words and phrases appear in the Plan, they have the respective meanings set forth below, unless the context in which they are used clearly indicates a different meaning.

### 2.01 Account

Account shall mean the separate accounts that the Plan Administrator shall maintain to record the interest of a Participant in the Plan. Such Accounts may include the Compensation Reduction Contributions Account, the Roth Compensation Reduction Contributions Account, and the Employee Rollover Contribution Account. In-plan Roth Conversions will be held in the Roth Compensation Reduction Contributions Account.



- 2.02 Adjusted  
Adjusted means adjusted for the cost of living at the time and in the manner as prescribed under Code section 457(e)(15).
- 2.03 Anniversary Date  
Anniversary Date shall mean each January 1 after the Effective Date.
- 2.04 Annual Additions  
Annual Additions means, for any Plan Year, the sum of: (i) all Contributions made on behalf of a Participant in accordance with Article V of this Plan; (ii) the forfeitures allocated to such Participant; (iii) the post-tax voluntary contributions, if applicable; (iv) amounts credited to an individual medical account, as defined in Section 415(l)(2) of the Internal Revenue Code, which is part of a defined benefit plan maintained by the Employer; and (v) amounts attributable to post-retirement medical benefits to a key employee, as required by Code section 419A(d)(2)
- 2.05 Annuity Contracts  
Annuity Contracts means any annuity contracts, fixed and/or variable, qualified for sale in California.
- 2.06 Base Salary  
For Eligible Employees paid on an hourly basis, Base Salary for each Pay Period shall be equal to the number of hours regularly scheduled to work for that Pay Period times hourly rate of pay. An exception to this definition shall be made for hours paid for Short-Term Disability (STD). STD hours shall only be included in the computation of Base Salary for each Pay Period if the Participant has elected to fully integrate STD with paid leave and/or regular time for that Pay Period. Base Salary shall not include payment for overtime, or payments made through the County's Medical Emergency Leave or Workers' Compensation Programs. For Eligible Employees who are elected officials paid on a daily basis, Base Salary for each Pay Period is equal to the number of days paid during that Pay Period times daily rate of pay.
- 2.07 Beneficiary  
Beneficiary means any person or organization designated by the Participant to receive an annuity, death benefit, or other benefit under the provisions of this Plan, by reason of such Participant's death provided that the sole primary Beneficiary of a married Participant shall be his or her surviving spouse unless the Participant has designated another Beneficiary with the written consent of such spouse. The designation may be made, and may be revoked and changed, only by a written instrument (in a form acceptable to the County) signed by the Participant, consented to by the Participant's spouse, if any, and filed with the Plan Record Keeper prior to the Participant's death.
- 2.08 Code  
Code means the Internal Revenue Code of 1986, as amended.

2.09 Compensation

Compensation means the total of all wages or salaries which are paid by the Employer to an Employee for services rendered, calculated without deduction for any portion thereof deferred under the provisions of this Plan or for any amounts contributed to any program established pursuant to Code sections 403(b), 401(a), 401(k), 408(k)(6), 125, 457, 501(c)(18) or any other similar provisions of the Code. For purposes of this Plan, Compensation includes regular, vacation, sick leave, administrative leave, annual leave, holiday, military and overtime pay and, under circumstances as set forth in Section 3.06(a) of this Plan, certain payments made through the County of San Bernardino STD Program. Compensation shall not include payment made through the Employer's Medical Emergency Leave or Workers' Compensation Programs.

The annual compensation of each Participant that may be taken into account in determining allocation for any Plan Year shall not exceed the limit under Code section 401(a)(17) adjusted under such regulations as may be issued by the Secretary of the Treasury.

2.10 Compensation Reduction Contribution

Compensation Reduction Contribution shall mean an Employer contribution made on behalf of a Participant pursuant to a Compensation Reduction Election in accordance with section 5.01 of this Plan. The term "Compensation Reduction Contributions" includes Pre-Tax Compensation Reduction Contributions and Roth Compensation Reduction Contributions.

2.11 Compensation Reduction Contributions Account

Compensation Reduction Contributions Account shall mean an account maintained for each Participant to reflect allocations of Compensation Reduction Contributions and investment earnings, gains and losses thereon. The term "Compensation Reduction Contributions Account" includes the Pre-Tax Compensation Reduction Contributions Account and the Roth Compensation Reduction Contributions Account.

2.12 Compensation Reduction Election

Compensation Reduction Election shall mean an agreement pursuant to section 3.01 of this Plan by which a Participant agrees to reduce his Compensation by a given percentage or flat dollar amount, and the Employer agrees to contribute to the Plan the amount of the reduction as a Compensation Reduction Contribution.

2.13 Contribution

Contributions shall include Compensation Reduction Contributions and Employee Rollover Contributions.

2.14 County

County means the County of San Bernardino.

- 2.15 Deferred Compensation  
Deferred Compensation shall refer to that portion of a Participant's Base Salary or Compensation that is not yet payable, which the Participant and the County mutually agree to defer in accordance with the provisions of this Plan. It shall also include any additional Compensation that the County may choose to provide for services rendered pursuant to section 5.04 of the Plan.
- 2.16 Defined Contribution Committee  
The Defined Contribution Committee shall mean the Committee appointed by the County in conformance with Article IV, section 4.02.
- 2.17 Dependents  
Dependents shall include a Participant's spouse and/or such other individuals whose relationship to the Participant meets the qualifications of a dependent as described in Code section 152.
- 2.18 Direct Rollover  
Direct Rollover means a payment by the Plan to an Eligible Retirement Plan as specified by the Distributee.
- 2.19 Distributee  
Distributee means: (a) an Employee or former Employee, (b) the Employee's or former Employee's surviving spouse, or (c) the Employee's or former Employee's spouse or former spouse who is the alternate payee under a domestic relations order, as defined under Code section 414(p).
- 2.20 Effective Date  
The Effective Date shall mean January 27, 1975.
- 2.21 Eligible Deferred Compensation Plan  
Eligible Deferred Compensation Plan has the meaning given it by Code section 457(b) and the regulations issued thereunder.
- 2.22 Eligible Employee  
Eligible Employee means any full-time regular employee or part-time regular employee or any elected official of the Employer.
- 2.23 Eligible Retirement Plan  
Eligible Retirement Plan means an eligible retirement plan that is an individual retirement account described in Code section 408(a), an individual retirement annuity (IRA) described in Code section 408(b), an Eligible Deferred Compensation Plan which is maintained by an eligible employer described in Code section 457(e)(1)(A), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), a qualified trust described in Code section 401(a) [including 401(k) plans], that accepts the Distributee's

Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a domestic relations order, as defined under Code section 414(p).

2.24 Eligible Rollover Distribution

Eligible Rollover Distribution means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or the joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); or any amount that is distributed on account of an Unforeseen Emergency Hardship.

2.25 Employee

Employee shall mean any person who is employed by the Employer, but excludes any person who is employed as an independent contractor.

2.26 Employee Rollover Contribution

Employee Rollover Contribution shall mean a Contribution that qualifies as a qualified rollover contribution from an eligible qualified retirement plan.

2.27 Employee Rollover Contribution Account

The Plan Record Keeper must maintain a record of a Participant's Rollover Contributions

2.28 Employer

Employer shall mean the County of San Bernardino and each other public agency listed in Appendix B that has adopted the Plan with the County Board of Supervisors' approval.

2.29 Employment Commencement Date

Employment Commencement Date shall mean the date an Employee is first employed by the Employer.

2.30 Entry Date

The Entry Date for an Eligible Employee shall be the first day of employment on which the Employee becomes an Eligible Employee or any day thereafter.

2.31 In-Plan Roth Conversions

Participants in the Plan may elect to convert all or a portion of vested pre-tax assets into the Roth Compensation Reduction Contributions Account.

2.32 Investment Policy Statement

Investment Policy Statement shall mean the adopted investment policy and administrative procedures by the County identifying the risks associated with the Plan by Plan Participants, the procedures for determining investment selection, the monitoring of investment performance, and procedures for replacing under-performing funds.

2.33 Normal Retirement Age

Normal Retirement age means the age designated by the Participant within the range of ages ending with 70½ and beginning not earlier than the earliest age at which the Participant has the right to retire through the San Bernardino County Employees Retirement Association and receive retirement benefits without actuarial reduction. For a Participant who continues in the service of the Employer after age 70½, Normal Retirement Age shall mean the age at which the Participant separates from service with the Employer.

2.34 Participant

Participant means any individual who performs services for the County, who is expressly authorized by the Employer to participate in this Plan, and who elects to participate in this Plan by filing a duly executed Participation Agreement with the Employer. Participant also includes any separated employee or Beneficiary who has unpaid benefits due under this Plan.

2.35 Participant Account

Participant Account means the book account(s) to which are credited the Participant's Deferred Compensation, together with any interest, dividends, gains, losses or the like.

2.36 Participation Agreement

Participation Agreement means a written agreement filed by an Eligible Employee who elects to participate or modify his or her participation in this Plan.

2.37 Pay Period

Pay Period shall mean the fourteen (14) day period for which the Employer issues pay warrants.

2.38 Plan

Plan means this Eligible Deferred Compensation Plan, as amended hereafter and known as:

“The San Bernardino County 457 Deferred Compensation Plan”

2.39 Plan Administrator

Plan Administrator means the County of San Bernardino Human Resources Benefits Chief, Employee Benefits and Services Division, who shall exercise the discretion or other functions given to the County under the Plan.

- 2.40 Plan Record Keeper  
Plan Record Keeper, custodian or investment manager means the financial service firm who has contracted with the County to provide recordkeeping, custodial and/or investment management services for the Plan.
- 2.41 Plan Year  
Plan Year means a calendar year.
- 2.42 Pre-Tax Compensation Reduction Contributions  
Pre-Tax Compensation Reduction Contributions means a Participant's Compensation Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Compensation Reduction Contributions by the Participant in his or her deferral election. A Participant's Pre-Tax Compensation Reduction Contributions will be separately accounted for, as will gains and losses attributable to those Pre-Tax Compensation Reduction Contributions, in a separate Account entitled the Pre-Tax Compensation Reduction Contributions Account.
- 2.43 Roth Compensation Reduction Contributions  
Contributions means a Participant's Compensation Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Compensation Reduction Contributions by the Participant in his or her deferral election. Roth Compensation Reduction Contributions shall be treated in the same manner as Compensation Reduction Contributions for all Plan purposes. A Participant's Roth Compensation Reduction Contributions will be separately accounted for, as will gains and losses attributable to those Roth Compensation Reduction Contributions, in a separate Account entitled the Roth Compensation Reduction Contributions Account. The Plan Record Keeper must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed). Roth Compensation Reduction Contributions are not considered Employee Voluntary Contributions as that term is defined in Section 2.27 of the Plan.
- 2.44 Roth Compensation Reduction Contributions Account  
The Plan Record Keeper must maintain a record of a Participant's Roth Compensation Reduction Contributions.
- 2.45 State  
State means the State of California.
- 2.46 Termination of Employment  
Termination of Employment means separation from service or severance from employment within the meaning of Treasury Regulation 1.457-6(b), or on account of the Participant's death or retirement.

2.47 Trust

Trust shall mean the legal entity established by the County for the Plan.

2.48 Trustee

Trustee shall mean an individual or individuals or institutional corporate trustee selected by the County to safeguard the Trust assets and to carry out the directions of the Plan Administrator and the Deferred Compensation Committee.

2.49 Trust Fund

Trust Fund shall mean all property of every kind held or acquired by the Trustee under any Trust Agreement required by the Plan.

**ARTICLE III  
PARTICIPATION / ELIGIBILITY**

3.01 Election to Participate

Any Eligible Employee may elect to become a Participant in the Plan and to defer payment of part of his or her Base Salary or Compensation, as defined in section 2.06 and section 2.09 not yet earned by executing a written Participation Agreement and filing it with the Plan Administrator. The Plan Administrator shall defer payment of the Participant's Base Salary or Compensation, as appropriate, in the amount specified in each Participation Agreement filed with the Plan Administrator. Deferral of Base Salary or Compensation, as appropriate, shall commence with the first day of the month following the pay period in which the election is made pursuant to section 3.03 of this Plan. Any Participation Agreement shall remain in effect until such time as it is revoked or changed pursuant to section 3.04 of this Plan. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code section 414(u).

Employees who receive a County match may defer an amount of their Base Salary, as defined in section 2.06. Employees who do not receive a County match may defer an amount of their Compensation, as defined in section 2.09.

3.02 Participation Agreement

The Plan Administrator shall establish a Participation Agreement form that shall contain provisions whereby the Participant specifies:

- (a) the flat dollar amount or percentage of his or her Base Salary or Compensation, as appropriate, that is to be deferred each pay period.
- (b) that the Participant, together with his or her heirs, successors, and assigns, holds harmless the County for any liability hereunder for all acts performed in good faith by the County, including acts relating to the investment of deferred amounts and/or the Employee's investment preference.

3.03 Agreement Effective Date

Once a Participation Agreement is received in good order, it will take effect on the income paid on the first pay date of the month following the month in which the Participation Agreement is signed by the Participant. Thereafter, during each pay period in which the Employee is a Participant in the Plan, that portion of his or her Base Salary or Compensation, as appropriate, which is specified by the Employee in the Participation Agreement shall be deferred and deposited with the Plan Record Keeper in accordance with the provisions of this Plan.

3.04 Amendment of Participation Agreement

A Participation Agreement shall remain in effect for a minimum of one month. At any time following one full month, the Participant may revoke, reduce or increase his or her deferral election amount by signing and filing with the Plan Administrator an amended Participation Agreement. Any amendment to revoke the Participation Agreement or to increase or decrease the amount of Base Salary or Compensation, as appropriate, deferred shall be effective prospectively only, beginning with the first pay date of the month following the month in which the Participation Agreement was signed by the Participant and received by the Plan Administrator.

3.05 Continuation of Participation

A person will continue to be a Participant for as long as an Account is maintained for him in accordance with Article VII, section 7.09. A Participant who ceases to be an Eligible Employee, as defined in Article II, section 2.19, but who remains employed by the Employer, will remain a Participant, but will no longer be eligible for Compensation Reduction Contributions or for a new Participant loan.

3.06 Term of Agreement

Upon termination of employment with the Employer, any Participation Agreements to defer Base Salary or Compensation, as appropriate, will be deemed revoked.

3.07 Leaves of Absence and Military Service

(a) Approved leaves of absence with pay shall not affect Participant Agreements in this Plan. Participants on approved leaves of absence who are fully integrating paid leave time with County STD payments shall continue to have Base Salary or Compensation deferred pursuant to the most recent Participation Agreement on file with the Plan Administrator. Participants on approved leaves of absences who are not fully integrating paid leave time with County STD payments shall have Base Salary or Compensation, as appropriate, deferred as set forth in the County of San Bernardino STD Plan Document. It is the sole responsibility of the Participant to notify the Plan Administrator through an amended and signed Participation Agreement if he/she wishes to stop or reduce the



amount of Base Salary or Compensation, as appropriate, deferred while receiving STD payments.

- (b) Approved leaves of absence without pay shall be considered a temporary revocation of the Participant's agreement to participate in this Plan. Participation in this Plan will be automatically reinstated as of the first day of the Participant's return to work following a leave of absence unless the Plan Administrator is otherwise directed by the Participant in writing.
- (c) An employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional deferrals upon resumption of employment with the Employer, subject to the following:
  - (i) The additional deferrals shall not exceed the maximum deferrals the employee could have elected during the period of qualified military service if the employee's employment with the Employer had continued at the same level of compensation without the interruption or leave of absence, reduced by the deferrals, if any, actually made during the taxable years(s) in which the qualified military service occurred.
  - (ii) The right to make additional deferrals is limited to the five-year period immediately following the resumption of employment with the Employer or, if sooner, the period immediately following the resumption of employment that is equal to three times the length of the interruption or leave of absence.
- (d) If the amount of Base Salary or Compensation, as appropriate, deferred in any taxable year exceeds the limitations described in this section when combined with other amounts deferred by a Participant under another eligible deferred compensation plan under Code section 457(b) for which the Participant provides information to the County, then the deferral for that taxable year (adjusted for any income or loss in value allocable thereto) shall be distributed to the Participant to the extent that the deferral exceeds the applicable limitation.

#### **ARTICLE IV ADMINISTRATION**

##### **4.01 Administration by County**

This Plan shall be administered by the County through the Plan Administrator, who shall prescribe such forms and adopt such rules and regulations as are necessary to carry out the purposes of the Plan. The County may employ investment consultants to provide advice concerning categories of investment,

investment guidelines and investment policy provided, however, that the advice or recommendations of any such investment consultants shall not be binding on the County, which shall make the final determination concerning investment categories, investment guidelines, and policies. The Plan Administrator shall have the full authority to adopt rules and regulations for the administration of the Plan and to interpret, alter, amend, or revoke any rules and regulations so adopted. The Plan Administrator shall have the full discretion to construe and interpret the terms and provisions of this Plan and all rules and regulations related thereto, which interpretation or construction shall be final and binding on all parties, except as otherwise provided by law. The Plan Administrator shall administer such terms and provisions in a uniform and nondiscriminatory manner and in full accordance with any and all laws applicable to this Plan.

The County may contract with a financially responsible independent contractor or contractors to administer and coordinate the Plan under the direction of the County. The County may also designate and authorize such general, annuity, and custodial accounts and agreements as necessary to fulfill the intendments of this Plan and Code Section 457. The Plan Administrator shall have the right to designate a Plan coordinator or other party of its choice to perform such services under the agreement as may be mutually agreed to between the Plan Administrator and the Plan coordinator or other party.

#### 4.02 Defined Contribution Committee

The County shall establish a Defined Contribution Committee to advise the County on all matters concerning the administration of the Plan including, but not limited to, the selection of the Plan Record Keeper, custodian or investment manager, and the determination of investment options, investment policy and administrative costs. The Defined Contribution Committee shall administer the County's Investment Policy Statement.

The Defined Contribution Committee has established By-Laws to identify its roles and responsibilities to the Plan. The By-Laws establish terms of office, trustee duties, selection and removal of trustees and other parameters to determine the governance of the plan.

#### 4.03 Administrative Costs

The County shall determine, in a manner deemed fair and equitable, the administrative costs associated with the withholding of Contribution amounts pursuant to this Plan or in making investments or otherwise administering or implementing the Plan. The County may withhold or collect, or have withheld or collected, such costs in such manner as the County deems equitable either: (i) from the Base Salary or Compensation deferred pursuant to the Plan, (ii) the income produced from any investment, whether or not augmented, or (iii) from the organization receiving such investment where required by law to collect there from or, if not so required, where mutually satisfactory to such organization and

the Plan Administrator. The Plan Administrator may remit or direct the remission of appropriate amounts so withheld or collected to the County.

4.04 Investment Policy Statement

The County shall develop and routinely review an investment policy to describe plan objectives, investment option categories and characteristics, the basis for fund selection and performance evaluation, and provision of investment education and communication to Participants.

4.05 Right to Amend, Modify and Terminate

The County may, at any time, modify or terminate the Plan.

4.06 Conformations

The County shall amend and interpret the Plan to the extent necessary to conform to the requirements of Code section 457 and any other applicable law, regulation or ruling, including amendments that are retroactive. In the event the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Code section 457 or any other applicable law, the County shall correct such inconsistency within the period provided in Code section 457(b).

4.07 Plan Termination

In the event of the termination of the Plan, distribution of benefits shall be made to Participants and Beneficiaries pursuant to the distribution guidelines in Article VII, the transfer provisions of Article XI or termination provisions of Article XV.

4.08 Maintenance of Records

The Plan Record Keeper will establish and maintain separate records of each Participant's Pre-Tax Compensation Reduction Contributions Account, Roth Compensation Reduction Contributions Account, Employer Matching Contribution Account, Employer Non-Elective Contribution Account, Employee Voluntary Contribution Account, Employee Rollover Contribution Account, and one or more investment accounts within said Accounts.

4.09 Valuation of Accounts

The Plan Administrator shall determine the frequency of the determination of the current market value of the Accounts in the Plan, but no less frequently than annually. The Plan Administrator may require the Plan Record Keeper to make such valuation on a daily basis. As of each such valuation, all investment income and capital gains and losses (both realized and unrealized), which have occurred since the preceding valuation, shall be proportionately allocated in an equitable manner among the Participant's Accounts. In the event more than one pooled investment fund is being utilized, such allocation shall be performed separately with respect to each such investment fund. All Contributions by or for the Participant, less any distributions and expense charges, shall also be credited to his Accounts.

4.10 Allocation of Contributions

The Contributions made by the Employer on behalf of the Participants shall be allocated to the Participants' Accounts as soon as administratively feasible following the completed processing of each Pay Period.

4.11 Determinations and Adjustments Binding on Participants

The Trustee's and/or the Plan Record Keeper's determination of the value of the Trust Fund and adjustments made or caused to have been made by the Plan Record Keeper and/or the Plan Administrator to all Accounts will be conclusive and binding on all Participants.

**ARTICLE V  
CONTRIBUTIONS**

5.01 Regular Contributions

The regular contribution is the amount of Base Salary or Compensation, as appropriate that may be deferred by a Participant subject to the following limitations:

- (a) Calendar Year Maximum. The maximum amount a Participant may defer during a calendar year shall not exceed the lesser of: (i) the applicable dollar amount as set forth in Code section 457(e)(15), as Adjusted, or (ii) one hundred percent (100%) of the Participant's net Compensation.
- (b) Pay Period Maximum. The maximum amount a Participant may defer during a pay period, when combined with previous deferrals to any 457 Deferred Compensation account during the calendar year, shall not exceed the lesser of: (i) the applicable dollar amount, as Adjusted, or (ii) one hundred percent (100%) of the Participant's year-to-date Compensation.
- (c) Pay Period Minimum. The minimum amount a Participant may defer is ten dollars (\$10) per pay period.

The Employer may, in operation, implement deferral election procedures for Roth Compensation Reduction Contributions provided such procedures are communicated to Participants and permit Participants to modify their elections at least once each Plan year.

5.02 Catch-Up Contributions

A Participant may defer an additional amount under this catch-up provision, for one or more of the last three calendar years ending before the Participant attains his or her Normal Retirement Age as defined in this Plan. The use of catch-up is subject to the following restrictions:

- (a) The maximum amount a Participant may defer each calendar year shall not exceed the lesser of these two amounts:
  - (i) twice the applicable calendar year maximum contribution amount pursuant to Section 5.01(a) above, or
  - (ii) any County provided Compensation eligible for deferral that was not deferred for any prior taxable year that began after December 31, 1978, the implementation date of 457 Deferred Compensation plans.
- (b) To use catch-up, a Participant must declare a Normal Retirement Age; however, for purposes of catch-up, such age shall not exceed 70½. This declaration does not compel retirement.
- (c) The catch-up provision may not be used during the calendar year that the Participant declares as their normal retirement age.
- (d) The catch-up provision may be used only once by any Participant for up to three consecutive years prior to the year that the Participant declares as their normal retirement age under this Plan.
- (e) Participants may continue to make regular contributions after they are no longer eligible to use catch-up.

5.03 Additional Elective Deferrals for Participants Age 50 and Over

All Participants who have attained age 50 and over during the calendar year shall be eligible to contribute an additional elective deferral into the Plan subject to the following restrictions:

- (a) The Participant may contribute the additional elective deferral as defined by Code section 414(v).
- (b) The Participant may not contribute the additional elective deferral while utilizing the regular 457 catch-up provision described in Section 5.02 above.

5.04 County Contributions

Nothing in this Plan prohibits the Employer from making deposits to a Participant's Participant Account as additional Deferred Compensation for services rendered, subject to the Participant's regular contribution limits.

5.05 Corrective Distributions Attributable to Roth Compensation Reduction Contributions

For any Plan Year in which a Participant may make both Roth Compensation Reduction Contributions and Pre-Tax Compensation Reduction Contributions,

the Plan Administrator operationally may implement an ordering rule procedure for the distribution of Excess Deferrals (Code section 402(g)), and Excess Annual Additions (Code section 415). Such ordering rules may specify whether the Pre-Tax Compensation Reduction Contributions or Roth Compensation Reduction Contributions are distributed first, to the extent such type of Compensation Reduction Contributions was made for the year. Furthermore, such procedure may permit the Participant to elect which type of Compensation Reduction Contributions shall be distributed first.

## **ARTICLE VI INVESTMENT FUNDS**

### **6.01 Investment of the Contributions**

The deferred amount shall be held for the exclusive benefit of Participants and their Beneficiaries under one or more Annuity Contracts, which may provide for guaranteed rates of interest, or under variable investment options.

### **6.02 County's Investment Rights**

The County may, but is not required to, invest amounts equal to the Contributions credited to a Participant Account in accordance with his or her requests. The County shall be under no obligation, however, to invest the deferred amount in the manner specified and shall retain the right to approve or disapprove investment requests made by the Participant at the time of enrollment or change in enrollment.

### **6.03 Fund Investment Options**

Participants will be permitted to invest Contributions made on their behalf in any combination of the funds selected for this Plan by the Defined Contribution Committee.

The Defined Contribution Committee will establish or change investment funds or cease to accept further investments in previously approved investment funds, as it deems appropriate, in its sole discretion. All Contributions on behalf of Participants who make no election will be invested in the fund designated by the Defined Contribution Committee.

The Plan Administrator may establish rules and regulations for the administration of investments and the exercise of investment options under the Plan in accordance with the Investment Policy Statement.

### **6.04 Change in Investment of Future Contributions**

The Plan Administrator shall determine the frequency that Participants may change their investment election, but, in any event, no less frequently than quarterly. Such changes shall be made by request with the Plan Record Keeper in such manner as may be prescribed and in accordance with such rules as the Plan Record Keeper may direct.

6.05 Change in Investment of Existing Account

As of any valuation date or any other date as specified by the Plan Administrator, a Participant may change the manner in which the Participant's existing Account is invested. Any election will be in whole percentages and will be made by a request to the Plan Record Keeper in accordance with such rules as the Plan Record Keeper may direct

6.06 Investment Disclaimer

Any action by the County in investing funds, or approving any such investment of funds, shall not be considered to be either an endorsement or a guarantee of any investment; nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations as provided under the distribution guidelines given below.

6.07 Participant Exercise of Control

In the case of any Participant who exercises control over the assets in his Account, no other person shall be liable for any loss that results from the Participant's exercise of control.

6.08 Statements

The County, through the Plan Record Keeper, will cause to be issued statements periodically to reflect the actual earnings, gains, contributions and losses posted to the Participant Accounts, as well as the balance of each account as of the most recent calendar quarter.

**ARTICLE VII  
BENEFITS AND DISTRIBUTIONS**

7.01 Vesting of Benefits

A Participant's Accounts in the Plan shall be fully vested and non-forfeitable at all times. Such Accounts shall be distributed as provided in this Article VII.

7.02 Eligibility

Distribution *may* be taken under any of the following circumstances:

- (a) Retirement;
- (b) Termination of Employment;
- (c) Participant's death;
- (d) Approval of request for an Unforeseen Emergency Hardship Distribution pursuant to Article VIII; or
- (e) Attainment of age 70½, whether or not still employed.

7.03 Distribution and Deferral

Distribution must follow the minimum distribution requirements of Code sections 401(a)(9) and 457(d) and the regulations thereunder as they may be amended from time to time. There is a substantial federal tax penalty for not satisfying the

minimum distribution requirements. Upon becoming eligible in accordance with section 7.01 above, distribution is subject to the following guidelines:

- (a) A Participant may elect to receive so much of his or her Participant Account in installment payments made at least annually. A Participant may elect to vary the amount or frequency of any such payments at least once each calendar quarter. However, at no time may the installment payment period exceed the Participant's life expectancy.
- (b) A Participant may elect to postpone distribution, even after using the catch-up provision.
- (c) A Participant who is still employed by the County at or after reaching age 70½ may elect to postpone distribution until retirement.
- (d) If eligibility for distribution is on account of the Participant's death, distribution shall commence in accordance with section 7.10 below.
- (e) Notwithstanding any provision of the Plan to the contrary, distribution from the Plan must commence and be made in accordance with Code section 401(a)(9) and Participants must commence distribution no later than April 1st following the later of:
  - (i) the calendar year in which the Participant attains the age 70½ years, or
  - (ii) the calendar year in which the Participant retires.

#### 7.04 Payment Options

Except in the event of the Participant's death, the amount credited to the Participant's Participant Account (including earnings and net gain or loss), less any federal or state income tax required to be withheld, shall be distributed as instructed by the Participant, following any one of the following payment options:

Option 1: A Full or Partial Lump Sum Payment. Benefits payable in cash.

Option 2: Payments for a Specified Period. Consecutive, periodic payments, made monthly, quarterly, semiannually or annually over a period of years from the date distribution begins, not to exceed the Participant's life expectancy on such date, or the joint life expectancy of the Participant and the Participant's spouse.

Option 3: Life Annuity. An annuity payable during the lifetime of the Participant.



- Option 4: Life Annuity with Period Certain Guaranteed. An annuity payable during the lifetime of the Participant, or his or her Beneficiary, with the guarantee that if, at the Participant's death, payments have not been made for the guaranteed period as elected, payments will continue to the Beneficiary. The guaranteed period to be elected must be either ten (10) or fifteen (15) years if the Beneficiary is not a spousal Beneficiary. For a spousal Beneficiary, the guaranteed period to be elected may be ten (10), fifteen (15) or twenty (20) years but may not exceed the life expectancy of the Participant and his or her spousal Beneficiary.
- Option 5: Joint and Survivor Annuity. An annuity payable during the lifetime of the Participant and a spousal Beneficiary of the Participant.
- Option 6: Designated Amount. A method of account liquidation of a specific dollar amount monthly until account funds are exhausted.
- Option 7: Freeze. Notwithstanding any provisions of this Article, a terminating Employee may elect to leave the funds, assets, and accumulations in his or her Participant Account until such time as he or she would otherwise receive the benefits in accordance with his or her stated preference as provided in Article VII of the Plan.
- Option 8: Combination Amount. A split payment under which a partial lump sum payment and payment under Options 2, 3, 4, 5, 6 or 7, as elected by the Participant, commences or are made at the same time.

#### 7.05 Distribution for Certain Non-Participating Participants

Notwithstanding any provision of the Plan to the contrary, if the total amount of a Participant's Participant Account under the Plan does not exceed the greater dollar limit of \$5,000 or the limit provided under Code section 411(a)(11)(A), the Participant may elect to receive the total amount in a single sum payable within sixty (60) days of such election; provided, however, such amount may be distributed pursuant to this Section 7.04 only if:

- (a) no amount has been deferred under the Plan with respect to such Participant during the two-year period ending on the date of the distribution, and
- (b) there has been no prior distribution under the Plan to such Participant to which this Section 7.04 applied. Distribution under this Section 7.04 may be made regardless of whether the Participant is an active Employee of the County or has separated from service if all other requirements, as identified herein, have been met.

7.06 Default Distribution Schedule

If the Participant fails to select a payment option for any event that causes amounts to become available under the Plan, the Participant shall be deemed to have elected, pursuant to Section 7.03(b) hereof, to postpone distribution of his or her benefit until the year in which the Participant attains age 70½. Upon such Participant's attainment of age 70½, payments shall be made at the direction of the Plan Administrator in a single lump sum payment or in accordance with the terms of the relevant Annuity Contract(s) and Code section 401(a)(9). Notwithstanding the foregoing, Participant Accounts not exceeding \$5,000 may be subject to earlier distribution in accordance with Section 7.04 above. Any mandatory distribution in excess of \$1,000 shall comply with the requirements of Code section 401(a)(31) requiring distributions to an individual retirement plan.

7.07 Payment Frequency

If the Participant has elected a payment option requiring installment payments, the Participant may also elect to have such payment made either monthly, quarterly, semi-annually or annually. However, no payment option may be selected by the Participant unless the amount of any installment is at least \$100. Additionally, any installment of less than \$250 will be paid no less often than quarterly.

7.08 Income Tax Reporting

Amounts paid to a Participant shall be subject to withholding for federal and state income taxes and shall be reported on appropriate tax reporting forms to the Participant. Amounts paid to a spouse or former spouse who is an alternate payee under a domestic relations order shall be subject to withholding for federal and state income taxes and shall be reported on appropriate tax reporting forms to the spouse or former spouse who is an alternate payee. If the alternate payee is not the Participant's spouse or former spouse, the distribution is taxable to the Participant.

7.09 Distribution in the Event of Participant Divorce

In the event of divorce by the Participant, a domestic relations order outlining the division of funds must be provided to and approved by the Plan Record Keeper before a joinder account can be established. Upon division of the account, the alternate payee may choose to take distribution of the joinder account balance. A spouse or former spouse who is an alternate payee may rollover the balance of the account to another Eligible Retirement Plan of which the spouse is a participant provided that the receiving plan provides for the acceptance of the amounts. The alternate payee may also choose to leave the joinder account balance in the County's Plan subject to all the remaining provisions of this Plan.

7.10 Distribution Schedule in the Event of the Participant's Death

In the event of the Participant's death, the full amount credited to the Participant's Participant Account, including earnings and net gain or loss, less any federal or

state income tax required to be withheld, shall be distributed according to the following requirements:

- (a) If distribution has commenced prior to the death of the Participant, the balance of a Participant's Participant Account shall be paid to the Beneficiary in accordance with the payment option already selected by the Participant so that the remaining distribution will be completed at least as rapidly as under the method of payment used before the Participant's death.
- (b) If the distribution has not commenced prior to the death of the Participant, a non-spousal beneficiary must either: (i) elect a distribution payable over a period not extending beyond the life expectancy of the Beneficiary, commencing no later than the end of the calendar year following the calendar year in which the Participant dies; or (ii) elect a single-sum payment to be made no later than the end of the calendar year which contains the fifth anniversary of the date of death of the employee, otherwise, such single sum payment shall be made by the end of such calendar year. A spousal Beneficiary may elect a single sum payment or a distribution payable over a period not extending beyond the life expectancy of the spousal Beneficiary. Distribution to the spousal Beneficiary must commence on or before the later of: (i) the calendar year immediately following the calendar year in which the Participant died; or (ii) the year the deceased Participant would have reached age 70½.
- (c) The Plan Record Keeper shall process distribution requests upon its receipt of all required forms in good order.

## **ARTICLE VIII UNFORESEEN EMERGENCY HARDSHIP DISTRIBUTIONS**

### **8.01 Administration**

Notwithstanding any other provisions of this Plan, a Participant may apply for a lump sum distribution of funds from the Plan under certain unforeseen emergency conditions. The Plan Record Keeper will evaluate the request to ensure conformity with the Plan and applicable laws and regulations and shall approve or deny the request based upon that evaluation. The Participant must make any requests for distribution pursuant to this section 8.01 on forms provided by the Plan Record Keeper and must provide all documentation and information requested therein along with any additional information requested by the Plan Record Keeper, which it may deem necessary to properly evaluate the request.

The Plan Record Keeper shall have fourteen (14) days to render a determination from date of receipt of the completed request form and all supporting

documentation unless circumstances require additional time. Initial determinations may be appealed in writing to the Plan Administrator within five (5) business days notice of the determination. The decision rendered by the Plan Administrator, based upon any appeal, shall be final and binding on the Participant and the County.

#### 8.02 Eligibility

The Participant must satisfy all of the following conditions before the Plan Record Keeper may authorize an Unforeseen Emergency Hardship Distribution:

- (ii) major unexpected and unreimburseable expenses exist that were not foreseeable and are beyond the Participant's control, or the expense involves the imminent foreclosure of, or eviction from, the Participant's primary residence;
- (iii) the unforeseeable emergency event involves the Participant, his or her spouse, any dependent who qualifies as a dependent under Code section 152(a) or a primary Beneficiary under the Plan;
- (iv) the financial burden created must be the legal obligation of the Participant;
- (v) all other financial sources, such as insurance payments and attempts to obtain loans, have been exhausted;
- (vi) all assets have been liquidated except where liquidation would itself cause severe financial hardship;
- (vii) the amount of the requested withdrawal is limited to the amount necessary to meet the financial emergency; and
- (viii) great financial hardship will occur if the withdrawal is not permitted.

For purposes of this section 8.02, a "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account balance under the Plan upon the death of the Participant.

#### 8.03 Hardship Circumstances

Examples of hardship circumstances include major property loss, including the imminent foreclosure of, or eviction from, the Participant's primary residence; catastrophic illness of Participant, spouse anyone who qualifies as a dependent under Code section 152(a) or a primary Beneficiary under the Plan; and the payment of funeral expenses for a Participant's family member. Withdrawals are not authorized for budgetable expenses such as automobile or college costs, credit card debt, a home down payment, or expenses related to divorce proceedings.

8.04 Revocation of Future Contributions

Upon the approval of an application for an Unforeseen Emergency Hardship Distribution, the Participant will not be eligible to make a deferral under the Plan for a period of six (6) months from the date of application approval.

8.05 Distribution Method

Any amounts so approved for withdrawal under this provision shall be paid to the Participant in a lump sum. Any remaining benefits shall be paid in accordance with Article VII of this Plan.

8.06 Reduction of Accounts

Withdrawals reduce the portion of a Participant's Account not invested in loans in accordance with Article XIII, in the order specified by the Participant, pursuant to rules established by the Plan Administrator.

Within each Account, withdrawals will be taken from amounts of all funds in which the Participant is invested on a prorated basis, or as the Participant otherwise specifies, pursuant to rules established by the Plan Administrator.

**ARTICLE IX  
BENEFICIARIES**

9.01 Beneficiary Designation

Each Participant has the right, by written notice filed with the Plan Record Keeper, to designate one or more Beneficiaries to receive any benefits payable under this Plan in the event of the Participant's death prior to the complete distribution of benefits provided that the sole Beneficiary of a married Participant shall be his or her surviving spouse unless the Participant has designated another Beneficiary with the written consent of such spouse. The designation may be made, and may be revoked and changed, only on a County approved Beneficiary designation form provided by the Plan Record Keeper. The Participant accepts and acknowledges that he or she has the burden for executing and filing with the Plan Record Keeper the proper Beneficiary designation form. It is not binding on the County or the Plan Record Keeper until it is signed by the Participant and Participant's spouse if applicable, and filed with and accepted by the Plan Record Keeper.

In the absence of such a designation, or if no designated person is living when a benefit is payable, the Plan Administrator will direct the Plan Record Keeper in writing to pay any benefits payable under the Plan in the following order of priority:

- (a) Spouse, if living; otherwise
- (b) Natural or legally adopted children in equal shares, if living; otherwise
- (c) Parents in equal shares, if living, otherwise
- (d) Siblings in equal shares, if living, otherwise
- (e) The estate of the Participant.

In the event any amount is payable under the Plan to a person for whom a conservator has been legally appointed, the payment shall be distributed to the duly appointed and currently acting conservator, without any duty on the part of the Defined Contribution Committee to supervise or inquire into the application of any funds so paid.

## **ARTICLE X NON-ASSIGNABILITY**

### **10.01 Non-Assignment of Account Benefits**

Neither the Participant nor the Participant's Beneficiary, nor any other designee, shall have any right to commute, sell, assign, pledge, hypothecate, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and non-transferable.

Any such assignment or transfer shall not be recognized by the County and, if made by the Participant in writing, shall be deemed to constitute an immediate revocation by the Participant of the assignment or transfer. In the event that a Participant commits or attempts to commit a prohibited act, the County is relieved of all liability under the Plan. Except to the extent otherwise provided by law, no Base Salary/Compensation deferred or benefits paid pursuant to this Plan shall be subject to attachment, garnishment or execution, or to transfer by operation of law in the event of bankruptcy or insolvency.

## **ARTICLE XI ROLLOVERS, TRANSFERS AND CONVERSIONS**

Code Section 457 and the applicable regulations permit rollovers, transfers and conversion of Plan interests.

### **11.01 Rollovers to the Plan**

- (a) Amounts that are considered Eligible Rollover Distributions in accordance with Code section 402(c)(4) may be rolled over by a Participant from an Eligible Retirement Plan and credited to the Participant's Participant Account under the Plan. The amounts rolled over from an Eligible Retirement Plan may be separately accounted for.

- (b) For purposes of this Section, the term “amounts rolled over from an Eligible Retirement Plan” shall mean:
  - (i) amounts rolled to the Plan directly from another Eligible Retirement Plan;
  - (ii) distributions received by a Participant from another Eligible Retirement Plan that are eligible for a tax deferred rollover to a Code section 457(b) plan maintained by an employer which satisfies the definition of Code section 457(e)(1)(A) and that are rolled over by the Participant to the Plan within sixty (60) days, following his receipt thereof; and
  - (iii) amounts rolled over to the Plan under subparagraphs (i) and (ii) by a Participant who is also a surviving spouse in accordance with Code section 401(a)(9) or a spouse or former spouse who is the alternate payee as defined in Code section 414(p).
- (c) As it deems necessary, the County may require from the Employee such documentation from the predecessor plan to perfect the rollover, to confirm that such plan is an Eligible Retirement Plan. The County may refuse to accept a rollover in the form of assets other than cash unless the County agrees to hold such other assets under the Plan. Any amounts transferred that had been deferred during prior calendar years will not be subject to current calendar year deferral limitations.

#### 11.02 Rollovers from the Plan

- (a) Notwithstanding any provision of the Plan to the contrary, a Participant shall be permitted to elect to have any Eligible Rollover Distribution rolled directly to an Eligible Retirement Plan specified by the Participant. The Participant shall, in the time and manner prescribed by the Plan Administrator, specify the amount to be rolled over and the Eligible Retirement Plan to receive the rollover. Any portion of a distribution which is not rolled over shall be distributed to the Participant.
- (b) The election described in subsection (a) also applies to the surviving spouse in accordance with Code section 401(a)(9) after the Participant's death or a spouse or former spouse who is the alternate payee as defined in Code section 414(p).
- (c) A non-spouse Beneficiary shall be permitted to elect to have a distribution to which (s)he is entitled to receive upon the death of a Participant or any portion thereof, rolled over to an Individual Retirement Arrangement (IRA) which is treated as an inherited IRA of the non-spouse Beneficiary.

11.03 In-Plan Roth Conversion

Participants may, at their discretion, elect to convert all or a portion of their existing Pre-Tax Compensation Reduction Contribution Account to the Roth Compensation Reduction Contributions Account at any time and will not be considered a distribution under the Plan.

11.04 In-Service Transfers for Purchase of Defined Benefit Service Credits

The Participant may request a transfer of all or a portion of his or her Account to any qualified retirement plan that will accept direct transfers from the Plan for the purpose of purchasing permissive service credit as defined in Code section 415(n)(3)(A). The amount so transferred shall not exceed the amount to be used for such purpose.

11.05 Transfers from Other Code Section 457(b) Plans

The Plan shall accept transfers of amounts previously deferred under another Code section 457(b) plan maintained by another Employer which satisfies the definition of Code section 457(e)(1)(A).

As it deems necessary, the County may require such documentation from the other plan to complete the transfer, to confirm that such plan is an eligible plan within the meaning of Code section 457, and to assure that transfers are provided for under the other plan, such transfers shall only be made only under such circumstances as are permitted under Code section 457 and any applicable regulations.

## **ARTICLE XII DOMESTIC RELATIONS ORDERS**

12.01 Domestic Relations Orders

The Plan Record Keeper, on the County's behalf, shall accept Domestic Relations Orders (DRO) meeting the requirements of Code section 414(p)(1) as modified by Code section 414(p)(11) to transfer all or a portion of the Participant's account to an alternate payee. All transfers or distributions made pursuant to a DRO are subject to the tax reporting provisions outlined in section 7.04.

## **ARTICLE XIII LOANS**

13.01 Participant Loans

A Participant who has an account balance with the Plan and who is an Eligible Employee, may on written application to the Plan Record Keeper and on approval by the Plan Record Keeper under such uniform rules as the Plan Administrator shall adopt, elect to borrow a portion of his or her Participant Account. The Rules and Regulations of the Loan Program are attached as Appendix A.



Roth Compensation Reduction Contributions may be withdrawn for a loan subject to the same conditions that apply to Pre-Tax Compensation Reduction Contributions. The Plan's loan policy or program may be modified to provide for an ordering rule with respect to the default of a loan that is made from the Participant's Roth Compensation Reduction Contribution Account and other Accounts under the Plan.

**ARTICLE XIV  
EXCLUSIVE BENEFIT**

- 14.01 All amounts of Base Salary or Compensation as appropriate, deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in trust or under one or more contracts described in Code section 401(f). Except as may otherwise be required by law, no assets or income of the Plan shall be used for, or diverted to, purposes other than for the exclusive purpose of providing benefits for Participants and their Beneficiaries or defraying reasonable expenses of administration of the Plan.

**ARTICLE XV  
AMENDMENT, TERMINATION  
OR DISCONTINUANCE OF CONTRIBUTIONS**

15.01 Right to Amend or Terminate the Plan

The County may amend the Plan, retroactively or otherwise, at any time. No such amendment may have the effect of vesting in the Employer any part of the Trust Fund, or of diverting any part of the Trust Fund for purposes other than for the exclusive benefit of Participants and Beneficiaries. No amendment will deprive any Participant or Beneficiary of any previously accrued benefits.

Continuance of the Plan and payment of Plan Contributions are entirely voluntary and are not assumed as contractual obligations of the County or other Employer. The County reserves the right to terminate the Plan in whole or in part or to discontinue Plan Contributions at any time.

15.02 Distribution of Trust Fund upon Termination

If the Plan terminates or Plan Contributions discontinue completely, all Participants' Accounts will be fully vested and will be distributed to them in a manner determined by the Defined Contribution Committee, in its sole discretion.

15.03 Other Employer Termination

Any Employer (other than the County) may terminate its participation in the Plan by resolution of its governing board, delivered to the County Board of Supervisors. Termination shall take effect no earlier than the date of such delivery.

At the request of the terminating agency, the Accounts of the then current Employees of the terminating agency shall be separated from all other Accounts of the Plan, all assets allocated to those Accounts shall also be separated from the other assets of the Plan, and the Plan Administrator and Trustee shall take all reasonable steps to transfer such Accounts and assets to a successor plan maintained by the agency. Such transfer shall occur no later than 60 days after notice of termination is delivered to the Board of Supervisors, unless otherwise agreed to by the County and terminating agency. The terminating agency shall reimburse the County for its reasonable costs of termination and transfer.

After notice of termination is delivered to the Board of Supervisors, no further additions shall be made to the Accounts of Employees of the terminating agency. However, the Accounts of Participants who are (or were) Employees of that agency shall be treated in the same manner as all other Participant Accounts for all other purposes, including but not limited to allocation of earnings on assets and distribution of benefits.

The County shall immediately notify, in writing, each public agency that participates in the Plan of any amendment to the Plan or Trust. A public agency may object, in writing, to an amendment of the Plan or Trust. Such objection shall be delivered to the County Board of Supervisors and shall be deemed to be a notice of termination of participation in the Plan by that agency

## **ARTICLE XVI MISCELLANEOUS PROVISIONS**

### **16.01 Contract of Employment**

The Plan does not constitute a contract between any Employee and the Employer and is not a consideration or an inducement to any Employee for employment by the Employer. Nothing contained in the Plan gives any Employee the right to be retained in the employ of the Employer or to interfere with the right of the Employer to discharge or to terminate the employment of an Employee at any time without regard to the effect of such action on Plan rights. No Participant or Beneficiary has any rights against the County or any other Employer for benefits payable under the Plan other than rights, if any, with respect to the Trust Fund.

### **16.02 Furnishing of Information**

Unless otherwise expressly provided in the Plan, all benefits to which any Participant or Beneficiary may be entitled will be determined according to the provisions of the Plan in effect on such Participant's severance from service date. In order to receive any Plan benefits, a Participant must furnish the Plan Administrator with such information that may reasonably be required for purposes of proper Plan administration.

16.03 Merger of Plans

In the event of any merger or consolidation of the Plan with, or transfer of assets or liabilities of the Plan to, any other retirement plan, Participants or Beneficiaries will, if such other plan then terminates, be entitled to receive a benefit immediately after the merger, consolidation, or transfer that equals or is greater than the benefit to which they would have been entitled immediately before the merger, consolidation or transfer if the Plan had then terminated

16.04 Substitute Payee

If a Participant or Beneficiary entitled to receive any distribution from the Plan is a minor, or is, in the judgment of the Plan Administrator, legally, physically, or mentally incapable of personally receiving any distribution, the Plan Administrator may make distributions to a legally appointed guardian, or to such other person, persons, or institutions as it may judge to be then maintaining or to have custody of the payee.

16.05 Governing Law

This Plan is created and shall be construed, administered and interpreted liberally to conform to and in accordance with Code section 457 or any other applicable laws and the regulations thereunder, and under the laws of the State of California. If any portion of this Plan is held illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder shall be unaffected.

16.06 Conflicts with Applicable Law

Notwithstanding any provision of the Plan to the contrary, in the event that any provision of the Plan conflicts with applicable laws or regulations, or as they may be amended from time to time, including but not limited to the California Public Employees' Pension Reform Act of 2013, the Plan shall be deemed to have been amended to be in conformity with said laws or regulations.

16.07 Successors and Assigns

The Plan shall be binding upon and shall inure to the benefit of the County, its successors and assigns, all Participants and Beneficiaries and their heirs and legal representatives.

16.08 Written Notice

Any notice or other communication required or permitted under the Plan shall be in writing, and if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at his or her last known address as it appears on the Plan Record Keeper's record. Any notice or other communication directed to the County shall be directed to San Bernardino County Human Resources, Employee Benefits and Services Division, 157 W. Fifth Street, First Floor, San Bernardino, CA 92415-0440.

16.09 Gender

Where appropriate herein, masculine and feminine pronouns are intended to include one another and the neuter.

16.10 Captions

Any captions used in the Plan are for the purposes of convenience only and shall not limit, restrict or enlarge the provisions of the Plan.

IN WITNESS WHEREOF, the County of San Bernardino has adopted this Plan and caused this instrument to be executed by its officers duly authorized, this 23rd day of April 2013

COUNTY OF SAN BERNARDINO

BY: \_\_\_\_\_  
Janice Rutherford, Chair, Board of Supervisors

## APPENDIX A

### **RULES AND REGULATIONS OF THE PARTICIPANT LOAN PROGRAM OF THE COUNTY OF SAN BERNARDINO 457(b) DEFERRED COMPENSATION PLAN**

#### **SECTION 1 ADMINISTRATION**

The Plan Administrator of the San Bernardino County 457(b) Deferred Compensation Plan administers this loan program, with day-to-day operations handled by the Plan Record Keeper. Inquiries regarding loans should be directed to the Plan Record Keeper.

#### **SECTION 2 AMOUNT AVAILABLE**

A Participant with an account balance with the Plan and who is an Eligible Employee may borrow, on written application to the Plan Record Keeper and on approval by the Plan Record Keeper under such uniform rules as the Plan Administrator shall adopt, an amount which, when added to the outstanding balance of any other active loans to the Participant from the Plan and any other qualified plan of the Employer does not exceed the lesser

- (a) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one (1) year period ending on the day before the date on which such loan is made, even if such loans have been repaid; or
- (b) one-half (1/2) of the present value of the non-forfeitable accrued benefit of the Employee under the Plan.

For purposes of this limit, all plans of the Employer shall be considered one plan, to the extent required by Section 72 of the Code, and the balance of all loans under any plan of the Employer under which the individual participates must be aggregated in determining the maximum loan available from the Plan.

#### **SECTION 3 LOAN LIMITATIONS**

- (a) Number of Loans. A Participant is limited to no more than one (1) outstanding general purpose and one (1) residential loan at any time.
- (b) Types of Loans.
  - (i) General Purpose Loans. Subject to limitations on the amount and number of loans, general purpose loans will be approved if the loan proceeds are to be used for any purpose.
  - (ii) Residential Loans. Subject to the limitations of the amount and number of loans, residential loans shall be approved if the loan proceeds are to be used to acquire, construct, reconstruct or substantially rehabilitate any dwelling which, within a reasonable time is to be used (determined at the

time the loan is made) as a principal residence of the Participant or a member of the family (within the meaning of Code section 267(c)(4) of the Participant.

(c) Loan Amounts

- (i) General Purpose Loans. The minimum amount of any general purpose loan is one thousand dollars (\$1,000).
- (ii) Residential Loan. The minimum amount of any residential loan is five thousand dollars (\$5,000).

**SECTION 4 TERMS**

In addition to such rules and regulations as the Plan Administrator may adopt, all loans shall comply with the following terms and conditions:

- (a) Assignment. An assignment or pledge of a portion of a Participant's interest in the Plan shall be required to secure a loan made under this section.
- (b) Application. An application for a loan by a Participant shall be made in writing to the Plan Record Keeper, whose action in approving or disapproving the application shall be final. In addition, if married, a Participant's spouse must consent in writing to the Participant's application for a loan under the Plan.
- (c) Note and Security. Each loan shall be evidenced by a promissory note executed by the Participant and delivered to the Plan Record Keeper and shall be adequately secured.

**SECTION 5 REPAYMENT TERMS**

The period of repayment for any loan shall be as determined in the loan application subject to the following:

- (a) General Purpose Loan. The maximum term of repayment for a general purpose loan is 57 months; and
- (b) Residential Loan. The maximum term of repayment for a residential loan is twenty (20) years.
- (c) Military Leave. In the event a Participant is enlisted or called up to active duty in the uniformed services of the United States (whether such enlistment is voluntary or as a result of being drafted under any national conscription law) and retains reemployment rights under law, loan repayments shall be suspended and interest shall continue to accrue at the current interest rate or 6.00% whichever is less, and the period of repayment shall be extended by the number of months of leave in the uniformed services.

- (d) Leave of Absence. In the event a Participant is on an Employer-approved, bona fide leave of absence without pay, other than a Military Leave as described in Section 5(c) above, loan payments may be suspended (but interest will continue to accrue) for the period of leave not to exceed one (1) year; however, the loan must be repaid by the original loan repayment date.

## **SECTION 6 INTEREST**

The interest rate to be charged on loans shall be determined at the time of the loan application and shall be a reasonable rate for loans established by the Plan Administrator. The interest rate so determined for purposes of the Plan shall be fixed for the duration of each loan.

## **SECTION 7 REPAYMENT**

- (a) Method of Repayment. Payments of principal and interest will be made by payroll deductions in substantially level amounts, no less frequently than quarterly, sufficient to amortize the loan over the repayment period. Loan repayments shall be paid to the Trust as soon as practicable but in no event later than the fifteenth (15<sup>th</sup>) business day of the month following the month in which such amounts would otherwise have been payable from payroll to the Participant in cash.
- (b) Prepayment. The Participant shall be permitted to repay the loan in full at any time prior to maturity, without penalty.
- (c) Foreclosure. If a loan is not repaid in accordance with the terms contained in the promissory note and a default occurs, the Plan may execute upon its security interest in the Participant's Account to satisfy the debt; however, the Plan shall not levy against any portion of the loan account until such time as a distribution of the account could otherwise be made under the Plan.
- (d) Effect on Death Benefit. Any security interest held by the Plan by reason of an outstanding loan to the Participant shall be taken into account in determining the amount of the death benefit or single lump-sum payment available.
- (e) Other Terms and Conditions. The Plan Administrator shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the status of the Plan or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Plan Administrator, in its discretion for any reason, may establish other terms and conditions of the loan, not inconsistent with the provisions of this Section. Any additional rules or restrictions as may be necessary to implement and administer the loan program shall be in writing and communicated to Participants. Such further documentation is hereby incorporated into the Plan by reference.

## **SECTION 8 PARTICIPANT LOAN ACCOUNTS**

Upon approval of a loan to a Participant by the Plan Record Keeper, an amount not in excess of the loan amount shall be transferred from the Participant's other investment fund(s) to the Participant's loan account as of the close of the accounting date which is the agreed upon date on which the loan is to be made. The assets of a Participant's loan account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by this section of the Plan.

## **SECTION 9 LOAN ORIGINATION FEE**

A one-time loan origination charge will be deducted from each Participant's Account at the time the loan is made. The amount is subject to change upon recommendation of the Plan Administrator and the approval of the Defined Contribution Committee.



## **APPENDIX B**

### **PARTICIPATING EMPLOYERS**

As approved by the Board of Supervisors of the County, each of the public agencies listed below is an Employer under the Plan. Immediately prior to becoming a public agency, each of these agencies were part of the County of San Bernardino and their employees were employed by the County and were Participants in this Plan. Additionally, the mission of and services performed by each of these agencies did not change when they became separate public agencies.

Superior Court of California, County of San Bernardino  
San Bernardino County Employees' Retirement Association  
San Bernardino County Board Governed Special Districts  
Local Agency Formation Commission – LAFCO  
San Bernardino Associated Governments - SANBAG