



## **THE SAN BERNARDINO COUNTY 401(k) DEFINED CONTRIBUTION PLAN**

Adopted by the Board of Supervisors, January 1, 1984  
Amendment approved by the Board of Supervisors, December 15, 1998  
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Amendment approved by the Board of Supervisor, February 23, 2010

The San Bernardino County 401(k) Defined Contribution Plan became effective January 1, 1984 and constitutes a defined contribution, profit sharing plan (qualified under the applicable portions of Section 401(a) and 401(k) 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 February 23, 2010.

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## **ARTICLE I 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.

1.01 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, the Employer Matching Contribution Account, the Employer Non-Elective Contribution Account, the Employee Voluntary Contribution Account, and the Employee Rollover Contribution Account.

1.02 Anniversary Date

Anniversary Date shall mean each January 1 after the Effective Date.

1.03 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 III 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)

1.04 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.

The annual Base Salary of each Eligible Employee that may be taken into account in determining allocations 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).

1.05 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.

1.06 Code

The Code shall mean the Internal Revenue Code of 1986, as amended.

1.07 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 3.01 of this Plan. The term "Compensation Reduction Contributions" includes Pre-Tax Compensation Reduction Contributions and Roth Compensation Reduction Contributions.

1.08 Compensation Reductions 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.

1.09 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.

1.10 Contributions

Contributions shall include Compensation Reduction Contributions and Employer Matching Contributions. Contributions may also include Employer Non-Elective Contributions, Employee Voluntary Contributions, and Employee Rollover Contributions. All discretionary contributions made under the Plan must be designated as Pre-Tax Compensation Reduction Contributions, Roth Compensation Reduction Contributions or as Employee Voluntary Contributions.

- 1.11 Control Group  
Control Group shall mean the County and any other Employer with whom the County is required to aggregate as a single employer under Code Section 414(b) or (c).
- 1.12 County  
The County shall mean the County of San Bernardino.
- 1.13 Defined Contribution Committee  
The Defined Contribution Committee shall mean the Committee appointed by the County in conformance with Article XI, Section 11.01.
- 1.14 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.
- 1.15 Effective Date  
The Effective Date shall mean January 1, 1984.
- 1.16 Eligible Employee  
Eligible Employee means an Employee who is:
- (a) in the Exempt occupational unit of the Employer; or
  - (b) an elected official of the Employer; or
  - (c) a contract employee of the Employer whose contract authorizes participation in the Plan; or
  - (d) any other Employee who is deemed an Eligible Employee by the County Board of Supervisors.
- 1.17 Employee  
Employee shall mean any person who is employed by the Employer, but excludes any person who is employed as an independent contractor.
- 1.18 Employee Rollover Contribution  
A Contribution that qualifies as a qualified rollover contribution from an eligible qualified retirement plan.
- 1.19 Employee Voluntary Contribution  
A discretionary, after-tax Contribution by a Participant, not to exceed ten percent (10%) of his or her aggregate Compensation for all Plan Years since he or she became a Participant under the Plan, subject to the limitations described in Section 3.07 of this Plan.

1.20 Employer

- a) 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.
- b) There shall be no change in the Account, the assets allocated thereto, the investment of such assets, or the distribution of such assets (or any other provision of the Plan except as specifically stated herein) or the participation status of any person who was a Participant in the Plan as a County Employee and who becomes a Participant as an Employee of an Employer listed on Appendix B.
- c) For purposes of contributions made by an Employer under this Plan, each public agency that is an Employer and its Employees shall be treated separately, and the contributions by a public agency shall only be allocated to the Accounts of Participants who are Employees of that public agency. For example, any Employer Matching Contribution shall only be made for Participants who are then Employees of the contributing Employer, and any Employer Non-Elective Contribution shall only be made for Participants who are then Employees of the contributing Employer.
- d) 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.
- e) 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.
- f) 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.
- g) 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.

1.21 Employer Matching Contribution

An Employer Contribution made on the basis of two (2) times a Participant's Compensation Reduction Contributions up to four percent(4%) of an Exempt Benefit Group A, B, C Participant's bi-weekly Base Salary, with a maximum matching Contribution of eight percent (8%) of a Participant's bi-weekly Base Salary.

An Employer Contribution made on the basis of two (2) times a Participants Compensation Reduction Contributions up to three percent (3%) of an Exempt Benefit Group D Participants bi-weekly Base Salary, with a maximum matching Contribution of six percent (6%) of a Participant's bi-weekly Base Salary

1.22 Employer Non-Elective Contribution

An Employer Non-Elective Contribution that is made on a discretionary basis and allocated to a Participant who is an Employee of the public agency Employer that made the contribution. Such contribution shall be allocated in proportion to the appropriate Participant's Base Salary during the payroll period or in such other manner as may be provided by an amendment to this Plan that is effective prior to such contribution.

1.23 Employment Commencement Date

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

1.24 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.

1.25 Investment Advisor

Investment Advisor shall mean that person or organization designated by the Defined Contribution Committee and selected by the County to render investment advice and who is registered under the Investment Advisor's Act of 1940.

1.26 Investment Manager

Investment Manager shall mean that person or organization designated by the Defined Contribution Committee and selected by the County to have the power to manage, acquire, or dispose of Plan assets, and who is registered as an investment advisor under the Investment Advisor's Act of 1940.

- 1.27 Investment Policy and Procedures Statement  
Investment Policy and Procedures 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.
- 1.28 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.
- 1.29 Participant  
Participant shall mean an Eligible Employee who commences participation in this Plan under the provisions of Article II herein, and whose employment or participation has not terminated. An Employee who becomes a Participant shall remain a Participant under the Plan until the Trustee has fully distributed his accrued benefit to him.
- 1.30 Pay Period  
Pay Period shall mean the fourteen (14) day period for which the Employer issues pay warrants.
- 1.31 Plan  
The Plan shall mean the employee benefit plan set forth in this document and as amended hereafter, known as:  
"The San Bernardino County 401(k) Defined Contribution Plan."
- 1.32 Plan Administrator  
The Plan Administrator shall mean the County's Human Resources Benefits Chief, Employee Benefits and Services Division.
- 1.33 Plan Record Keeper  
Plan Record Keeper shall mean that individual or organization designated by the Defined Contribution Committee and selected by the County to maintain the records of the Plan.
- 1.34 Plan Year  
The Plan Year shall commence at 12:00 a.m. on January 1 of each year and end at 11:59 p.m. on December 31 each year. The Plan Year shall be the year used for purposes of the limitations on contributions and benefits imposed by Code Section 415.

- 1.35 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.
- 1.36 Roth Compensation Reduction Contributions. Roth Compensation Reduction 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 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 1.19 of the Plan.
- 1.37 Trust  
Trust shall mean the legal entity established by the County for the Plan.
- 1.38 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 Defined Contribution Committee.
- 1.39 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.
- 1.40 Valuation Date  
Valuation Date shall mean the last day of the Plan Year ending December 31.

## **ARTICLE II PARTICIPATION**

- 2.01 Election to Participate  
Each Eligible Employee may elect to become a Participant on his or her Entry Date or thereafter by making a Compensation Reduction Election on forms approved by the County and provided by the County or Plan Record Keeper.

2.02 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 IV, Section 4.01. A Participant who ceases to be an Eligible Employee, as defined in Article I, Section 1.16, 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.

**ARTICLE III  
CONTRIBUTIONS**

3.01 Compensation Reduction Contributions

Each Participant may elect a flat dollar amount or a percentage of reduction in Compensation to be effective each Pay Period. The amount of the reduction from each Pay Period will be contributed to the Plan on the Participant's behalf by the County on or about the date payroll warrants are next issued for that period. This election will be referred to as a Compensation Reduction Election, and such Contributions will be referred to as Compensation Reduction Contributions. Irrespective of the Compensation Reduction Election, the reduction of compensation shall not affect the calculation of Base Salary for purposes of computing other benefits such as retirement, contributions to the deferred compensation plan, overtime compensation, and Social Security.

No Participant shall be permitted to have Compensation Reduction Contributions made under the Plan or any other qualified plan of the Employer during the taxable year in excess of the dollar limitation contained in Code Section 402(g) in effect at the beginning of such taxable year.

Compensation Reduction Elections will be made on an appropriate form supplied by the Plan Administrator. The Plan Administrator may establish such rules as it deems appropriate concerning the administration of Compensation Reduction Elections, including requiring reasonable notification periods.

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.

3.02 Employer Matching Contributions

Bi-weekly contributions of eligible Exempt A, B and C Participants in the Plan may be matched by an Employer contribution on the basis of two (2) times a Participant's Compensation Reduction Contribution up to four percent (4%) of a Participant's bi-weekly Base Salary with a maximum matching contribution of eight percent (8%) of a Participant's bi-weekly Base Salary.

Bi-weekly contributions of eligible Exempt D Participants in the Plan may be matched by an Employer contribution on the basis of two (2) times a Participant's

Compensation Reduction Contribution up to three percent (3%) of a Participant's bi-weekly Base Salary with a maximum matching contribution of six percent (6%) of a Participant's bi-weekly Base Salary.

Employer Matching Contributions made with respect to Roth Compensation Reduction Contributions will be allocated to the Employer Matching Contributions Account. Employer Matching Contributions shall not be computed on the basis of any Employee Voluntary Contributions made by a Participant.

### 3.03 Employer Non-Elective Contributions

The Employer may contribute such additional amounts to the Trust as it shall determine for any Plan Year. Providing a Participant is contributing on a bi-weekly basis, the Employer shall allocate such contributions in proportion to the Participant's Base Salary during the payroll period or in such other manner as may be provided by an amendment to this Plan that is effective prior to such contribution.

### 3.04 Employee Voluntary Contributions

Participants in the Plan shall have the right to make voluntary, after-tax contributions. Employee Voluntary Contributions shall not be eligible for Employer Matching Contributions.

### 3.05 Employee Rollover Contribution

Any Participant may contribute cash to the Trust Fund if the Contribution is an "eligible qualified rollover contribution," which the Code permits an Employee to rollover from one qualified asset or eligible plan to another qualified asset or eligible plan. Before accepting a rollover contribution, the Trustee may require an Employee to furnish satisfactory evidence that the proposed transfer is in fact a "qualified rollover contribution." A separate Account may be maintained with respect to a Participant's rollover contribution, except that the Plan shall establish and maintain for the Participant a separate Account for any eligible rollover distribution of after tax amounts paid to the Plan.

### 3.06 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 amount into the Plan subject to the annual additional maximum amount as defined by Code Section 414(v).

### 3.07 Limitations on Annual Additions

Notwithstanding any other Plan provisions, the Annual Additions to each Participant's Account plus the annual additions, as defined in Code section 415 and the regulations thereunder, made to any other qualified plan maintained by the Employer for any Plan Year will not exceed the least of the following:

- (a) \$40,000, adjusted to take into account any cost-of-living increase adjustments provided for the Plan Year under Code Section 415(d), or

- (b) 100% of the Participant's compensation as defined in Code section 415(c) and the regulations issued thereunder for the Plan Year.

### 3.08 Effect of Limitations of Annual Additions

If the Contributions for a Participant are to be reduced pursuant to the provisions of Section 3.07 above, they will be reduced in the following order:

- (a) Employee Voluntary Contributions
- (b) Employer Non-Elective Contributions
- (c) Employer Matching Contributions
- (d) Roth Compensation Reduction Contributions
- (e) Pre-Tax Compensation Reduction Contributions

Amounts that cannot be allocated to a Participant's Account because of the limitations provided in Section 3.07 shall not be so allocated and the Plan Administrator shall take such corrective action as is authorized pursuant to the Code, regulations issued thereunder, and other guidance issued by the Internal Revenue Service.

### 3.09 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.

### 3.10 Military Service

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).

- a) An employee whose employment is interrupted by qualified military service under Internal Revenue Code Section 414(u) or who is on a leave of absence for qualified military service under Internal Revenue Code Section 414(u) may elect to make additional deferrals upon resumption of employment with the County subject to the following:
  - i. The additional deferrals shall not exceed the maximum deferral the employee could have elected during the period of qualified military service if the employee's employment with the County 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 year(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 County 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.
- b) If the amount of compensation 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 Internal Revenue 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 RECORDKEEPING**

### **4.01 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.

### **4.02 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.

### **4.03 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.

4.04 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  
BENEFITS AND DISTRIBUTIONS**

5.01 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 V.

5.02 Benefit Payments

Payment of benefits under any of the provisions of this Plan shall be made by the Trustee in accordance with the directions of the Plan Administrator as to method, commencement date, amounts, and payees. Benefits shall commence in accordance with the requirements of Code Section 401(a)(9) and the regulations thereunder.

Minimum distribution payments under Code Section 401(a)(9) must begin by April 1 of the year following the later of:

- (i) the year in which the Participant attains age 70½, or
- (ii) the year in which the Participant terminates from service with the Employer.

In lieu of or as part of any of the benefits herein provided, the Defined Contribution Committee may instruct the Trustee at any time to purchase or acquire by conversion rights, from an insurance company, immediate or deferred, level or variable, individual or group, annuity contracts which provide benefits substantially equivalent to the benefits herein provided. Such contracts or individual certificates may either be held by the Trustee as owner, or if directed by the Plan Administrator, shall be transferred to the Participant or his Beneficiary, subject to an endorsement making them nontransferable except to the company which issued them, in complete satisfaction of their equivalent benefits hereinabove provided and in full discharge of all liability of the Employer and Trustee hereunder.

Notwithstanding any other provision on the Plan, all distributions made under the Plan shall comply with the requirements of Code section 401(a)(9) including but not limited to the incidental death benefit requirements in Code section 401(a)(9)(G).

5.03 Distribution Limitations

Employer Matching Contributions, Compensation Reduction Contributions, and Employer Non-Elective Contributions as defined in Article III are not distributable earlier than upon one of the following events:

- (a) The Participant has reached his Normal Retirement Age and has separated from County services; or
- (b) The Participant has attained age 59½; or
- (c) The Participant has separated from service; or
- (d) The Participant has died or become disabled as defined by the County Employer Retirement Law of 1937; or
- (e) The Participant has a financial hardship, as defined in Article VII; or
- (f) The Plan has been served with a court-approved domestic relations order determined acceptable by the Plan Administrator or its designee.
- (g) The date the Participant became eligible to take a “qualified reservist\_ distribution”, as defined in Code Section 72(t)(2)(G)(iii).

A Participant may receive an in-service distribution other than a hardship distribution of the Participant’s Roth Compensation Reduction Contribution Account. The distribution must satisfy the same conditions that apply to in-service distributions from the Pre-Tax Compensation Reduction Contribution Account.

#### 5.04 Form of Benefit Payment

- (a) Benefits shall be paid in one of the following ways as selected by the Defined Contribution Committee:
  - (i) by a full or partial lump sum payment. A full lump sum will be the automatic form of payment if the value of the Participant's Account is less than \$5,000 or a lower amount as determined by the Plan Administrator, provided that all 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.
  - (ii) by continuation of the Account in the Trust with adjustments for periodic valuations and payment in installments fixed by the Plan Administrator subject to (b) below.
- (b) If payment is by installments, the following shall apply:
  - (i) Installment payments shall be 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.

- (ii) Installments shall normally be substantially equal over the period of payout. Variations may occur because of redetermination of the Participant and spouse's life expectancy or changes in the account balances because of trust investment results. The installment sizes may also be changed by the recipient subject to rules of the Plan Administrator and applicable law.
- (iii) Installments in any year as described under Section 5.04(b)(ii) shall not be less than an amount determined by dividing the account balances by the joint and last survivor life expectancy of the Participant and designated Beneficiary as of the first of the year, starting with the year in which payments begin.

5.05 Limitation on Form of Benefit

- (a) Subject to (b) of this Section, benefits may be paid over a period not longer than the life expectancy of the Participant and of the designated beneficiary, if any.
- (b) The Plan Administrator shall coordinate with Plan provider(s) to determine minimum installment sizes. The Plan will utilize life expectancies as of the benefit starting date using actuarial assumptions acceptable to the Treasury Department. The life expectancy of a Participant or spouse may be recalculated annually.
- (c) The present value of payments to be made to the Participant must be over 50 percent (50%) of the value of the total benefit as of the end of the Plan Year in which the Participant retires or reaches age 65, whichever is later.

5.06 Benefits upon Death

Upon the death of a Participant, the Plan Administrator shall direct that the deceased Participant's Accounts be distributed to the Participant's Beneficiary.

The Plan Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant, as the Plan Administrator may deem appropriate. The Plan Administrator's or its designee's determination of death and of the right of any person to receive payment shall be conclusive.

Notwithstanding any provision in the Plan to the contrary, distribution upon the death of a Participant, shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the regulations thereunder, including the minimum distribution incidental benefit rules.

- (a) If minimum payments under Code Section 401(a)(9) have not begun upon the death of a Participant, and the designated Beneficiary *is not* the Participant's surviving spouse, death benefit payments must:
  - (i) begin to be distributed to the designated Beneficiary no later than the December 31 of the calendar year immediately following the calendar year of the Participant's death payable over a period not to exceed the life expectancy of the Beneficiary; or
  - (ii) be distributed no later than the December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (b) If minimum payments under Code Section 401(a)(9) have not begun upon the death of a Participant and the designated Beneficiary *is* the Participant's surviving spouse, minimum payments to the surviving spouse must begin by the later of the:
  - (i) December 31 of the calendar year immediately following the calendar year in which the Participant dies, or
  - (ii) December 31 of the calendar year in which the Participant would have attained age 70½.

The payment to the surviving spouse must be made over a period not to exceed the surviving spouse's life expectancy. However, a surviving spouse may elect to receive the death benefit payments no later than the December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (c) If minimum payments under Code Section 401(a)(9) have begun prior to the death of the Participant, the remaining portion of the Participant Account shall be distributed to the Beneficiary(ies) at least as rapidly as under the method of distribution in effect prior to the death of the Participant.

#### 5.07 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 VI INVESTMENT FUNDS**

### **6.01 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 currently in force Investment Policy and Procedures Statement.

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

The Defined Contribution Committee shall determine the frequency that Participants may change their investment elections. 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.

6.03 Change in Investment of Existing Account

As of any Valuation Date or any other date as specified by the Defined Contribution Committee, a Participant may change the manner in which his 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.

6.04 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.

**ARTICLE VII  
HARDSHIP WITHDRAWALS**

7.01 Eligibility

Participants who have incurred a hardship, within the meaning of Code Section 401(k) and its regulations, may elect to withdraw all or any portion of their Vested Accounts, not invested in loans, in accordance with this Article VII. For purposes of this Article, a distribution is on account of hardship only if the distribution is made both on account of an immediate and heavy financial need of the Participant and is necessary to satisfy such financial need. A distribution will be deemed to be made on account of an immediate and heavy financial need of the Participant if the distribution is on account of:

- (a) Uninsured medical expenses described in Code Section 213(d) previously incurred by the Participant, the Participant's spouse, any dependents of the Participant (as defined in Code Section 152), or a primary Beneficiary under the Plan or necessary for these persons to obtain medical care described in Code Section 213(d);
- (b) Purchase (excluding mortgage payments) of a principal residence of the Participant;
- (c) Payment of tuition and related educational fees for the next twelve (12) months of post-secondary education for the Participant, his or her spouse, children, dependents or a primary Beneficiary under the Plan;
- (d) The need to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence;
- (e) Burial or funeral expenses for the Participant's deceased parent, spouse, children, dependent or a primary Beneficiary under the Plan;

- (f) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income); or
- (g) Such other deemed immediate and heavy financial needs as may be announced by the Internal Revenue Service through the publication of revenue rulings, notices, and other documents of general applicability, and which are adopted by the Defined Contribution Committee as a permissible reason for a hardship distribution.

For purposes of this Section 7.01, 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.

A distribution will not be treated as necessary to satisfy an immediate and heavy financial need of a Participant to the extent the amount of the distribution is in excess of the amount required to relieve the financial need or to the extent such need may be satisfied from other resources that are reasonably available to the Participant.

For purposes of this Section, the Participant's resources shall be deemed to include those assets of his or her spouse and minor children that are reasonably available to the Participant. However, property held for the Participant's child under an irrevocable trust or under the Uniform Gifts to Minors Act will not be treated as a resource of the Employee.

In the event that the Participant requests a hardship distribution, he or she will not be eligible to make contributions to the 401(k) Defined Contribution Plan and all other qualified and nonqualified plans of the County or other Employer, except contributions to health and welfare plans, for six (6) months after the hardship distribution is approved. In addition, the Participant may not make Compensation Reduction Contributions for the Participant's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Code Section 401(g) for such next taxable year less the amount of such Participant's Compensation Reduction Contributions for the taxable year of the hardship distribution. The Plan Administrator or its designee shall determine if a Participant's circumstances constitute a hardship as set forth herein. The decision may be appealed directly to the Plan Administrator, whose determination shall be final and binding.

No distribution will be permitted under any other circumstances except as specified in Articles V and VII of this Plan.

Distributions made pursuant to this Article VII may be "grossed up" to include federal and state income taxes and penalties, as applicable.

A Participant may receive a hardship distribution of Roth Compensation Reduction Contributions subject to the same conditions that apply to Pre-Tax Compensation Reduction Contributions.

7.02 Payment of Withdrawals

A hardship withdrawal election must be made on the appropriate form filed with the Plan Administrator or its designee. Payment of withdrawals will be made as soon as administratively feasible following approval of the hardship by the Plan Administrator or its designee. Withdrawals will reduce the Participant's Account as of the date of withdrawal.

7.03 Reduction of Accounts

Withdrawals reduce the portion of a Participant's Account not invested in loans in accordance with Article VIII, 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 VIII LOANS**

8.01 Participant Loans

A Participant with an account balance with the Plan and who is an 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 IX  
DIRECT ROLLOVER OR TRANSFER OPTION**

9.01 Rollovers into the Plan from Eligible Rollover Plans

- (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."
- (b) For purposes of this Section, the term "eligible retirement plan" shall mean any other 401(k) plan, a 401(a) plan, a 403(b) program, a 457(b) plan maintained by an employer which satisfies the definition of Code Section 457(c)(1)(A) ("a governmental 457(b) plan"), an individual retirement account as described in Code Section 408(a), and individual retirement annuity as described in Code Section 408(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) distribution received by Participant from another eligible retirement plan that are eligible for tax free rollover to a 401(k) plan and that is rolled over by the Participant to the Plan within sixty (60) days, following his receipt thereof;
  - (iii) amounts rolled over to the Plan under subparagraphs (i) and (ii) by a Participant who is a surviving spouse or a spouse or former spouse who is an 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 plan within the meaning of Code Sections 401(a), 401(k), 403(b), 457, or 408 (IRA), to assure that transfers are provided for under such 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 rolled over that had been deferred during prior calendar years will not be subject to current calendar year deferral limitations.
- (d) The Plan shall establish and maintain for the Participant a separate Account for any eligible rollover distribution of after-tax amounts paid to the Plan.

- (e) Any other amounts rolled over from a 401(a), 401(k), 403(b) or governmental 457(b) or 408 (IRA) may be separately accounted for.
- (f) The Plan shall accept a rollover contribution to a Participant's Roth Compensation Reduction Contribution Account only if it is a direct rollover from another Roth compensation reduction contribution account of an applicable retirement plan as described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 402(c).

#### 9.02 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" transferred 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 transfer. Any portion of a distribution which is not rolled over shall be distributed to the Participant.
- (b) For purposes of this Section, the term "eligible rollover distribution" means any distribution of amounts other than in a distribution form of substantially equal periodic payments (not less frequently than annually) over life or life expectancy of the Participant (or joint life or joint life expectancies of the Participant and the designated beneficiary) or a distribution over a period certain of ten (10) years or more. Amounts required to be distributed under Code Section 401(a)(9) or any amounts distributed on account of a hardship distribution under Code Section 401(k) are not eligible rollover distributions.
- (c) For purposes of this Section, the term "eligible retirement plan" shall mean any other 401(k) plan, a 401(a) plan, a 403(b) program, a governmental 457(b) plan, an individual retirement account as described in Code Section 408(a), and an individual retirement annuity as described in Code Section 408(b).
- (d) The election described in subsection (a) also applies to the surviving spouse after the Participant's death or a spouse or former spouse who is the alternate payee under a domestic relations order as defined in Code Section 414(p).
- (e) 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.

- (f) A direct rollover of a distribution from a Participant's Roth Compensation Reduction Contribution Account shall only be made to another Roth compensation reduction contribution account of an applicable retirement plan as described in Code Section 402A(e)(1) or to a Roth IRA as described in Code Section 408A, and only to the extent the rollover is permitted under the rules of Code Section 402(c).

The Plan shall not provide for a direct rollover for distributions from a Participant's Roth Compensation Reduction Contribution Account if the amount of the distributions that are eligible rollover distributions are reasonably expected to total less than \$200 during a year. In addition, any distribution from a Participant's Roth Compensation Reduction Contribution Account is not taken into account in determining whether distributions from a Participant's other Accounts are reasonably expected to total less than \$200 during a year.

The provisions of the Code that allow a Participant to elect a direct rollover of only a portion of an eligible rollover distribution but only if the amount rolled over is at least \$500 is applied by treating any amount distributed from a Participant's Roth Compensation Reduction Contribution Account as a separate distribution from any amount distributed from the Participant's other Accounts in the Plan, even if the amounts are distributed at the same time.

#### 9.03 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.

A transfer of funds for this purpose must be made on the appropriate form(s) filed with the Plan Administrator. The Plan Administrator will make the transfer as soon as administratively feasible following approval of the transfer.

The Plan Administrator may establish rules for administration of this Section. Article VII, Section 7.03, of this Plan shall apply in determining the Fund(s) from which the transfer shall be made.

## **ARTICLE X TRUSTEE**

#### 10.01 Duty of Trustee

The County shall select the Trustee. The duties of the Trustee shall be confined to safeguarding the Trust assets and carrying out the directions of the Defined Contribution Committee and the Plan Administrator. The Trustee shall assume

such level of investment responsibility as the County may direct. The directions of the County to the Trustee may be verbal unless the Trustee requests a written confirmation. The Trustee shall be fully protected in acting upon any authorization or direction given to him in the form provided herein and believed by it to be genuine. The Trustee shall discharge the duties under this Plan solely in the interest of the Participants and for the exclusive purpose of providing benefits to such persons and defraying reasonable expenses of administering the Trust, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Plan. The duties and obligations of the Trustee as such shall be limited to those expressly imposed upon it by this Plan, it being hereby expressly agreed that the Trustee is not a party to the Plan.

#### 10.02 Powers of Trustee

- (a) In the discharge of its duties as described herein, the Trustee shall have all powers necessary to hold in trust and administer the Trust Fund as contemplated hereby, including, but not limited to the power:
- (i) To receive the income of the Trust Fund;
  - (ii) To pay the expenses of the Trust (including any taxes) out of the Trust Fund, including reasonable compensation for its services as Trustee (if and to the extent that the Employer does not pay such expenses and compensation);
  - (iii) To employ suitable agents and counsel and pay their reasonable expenses and compensation out of the Trust Fund (if and to the extent that the Employer does not pay such expenses and compensation);
  - (iv) To manage, control, sell, convey, exchange, partition, divide, subdivide, improve and repair; to grant options and to sell upon deferred payment; to lease for terms within or extending beyond the duration of this Trust, for any purpose, including exploration for removal of gas or other minerals, to enter into community oil leases; to create restrictions, easements and other servitudes; to compromise and defend action and proceedings; to carry such insurance for the protection of the Trust estate as the Trustee may deem advisable;
  - (v) To invest and reinvest, without distinction between principal and income, any money at any time held in trust hereunder in any securities, including common and preferred stocks, bonds, put and

call options (including the granting of option to purchase and sell securities), interest in limited partnerships whose purpose is investing and reinvesting in securities or property, or in any other property, real or personal, tangible or intangible, including real estate loans and common trust funds established by the Trustee or other institutional Trustees and to retain as part of the Trust Fund any securities or other property received or acquired by it, irrespective of whether or not such securities or other property are approved by law as investments for trust funds;

- (vi) To hold uninvested any cash contributions to the Trust Fund and to create reserves of cash or other assets of the Trust Fund, without liability for interest thereon, for the payment of expenses, or for distribution pursuant to the Plan, or for any other purpose in connection with the Plan;
- (vii) To deposit any monies at any time held in the Trust Fund in any savings bank or in the savings department of any bank or trust company including, where applicable, the savings department of the Trustee;
- (viii) To borrow money, including purchasing stock on margin, and to secure the same by mortgage, deed of trust, or pledge of the Trust Fund, or any asset constituting a part thereof, and to pay and discharge any and all indebtedness of the Trust, or any liens or other charges against the Trust Fund;
- (ix) To borrow the cash values of annuity or insurance contracts held in the Trust Fund. The Trustee may invest such borrowed funds in any security or other property including premiums for the same or other insurance or annuity contracts held by or applied for by the Trustee for purposes of the Plan. The Trustee's power hereunder shall be exercised only as directed by the Defined Contribution Committee.
- (x) To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust Fund; to commence to defend legal proceedings for or against the Trust; and to represent the Trust in all proceedings in any court of law or equity or before any other body or tribunal. The Trustee shall not exercise any of the powers conferred upon it by this Section 10.02 without first giving notice of the action proposed to be taken to the Defined Contribution Committee and obtaining written approval of such action from the Defined Contribution Committee.

#### 10.03 Liability of Trustee

The Trustee shall not be liable or accountable in any manner to the Defined Contribution Committee or any person for or by reason of any action taken or omitted by it under the instruction of the Defined Contribution Committee, or on the basis of any facts certified to it by the Defined Contribution Committee; nor for or by reason of its omission to act in the absence of instructions to the Trustees as herein provided for, the Trustee may, but shall not be required to, act without such instructions, as in its discretion seems appropriate and advisable under the circumstances, for the carrying out of the purpose of this Plan. The Trustee may employ agents and consult with legal counsel (who may or may not be counsel to the Employer) concerning the duties hereunder.

#### 10.04 Retention of Assets Pending Settlement of Dispute

In the event that a dispute arises as to the persons to whom payment and the delivery of any funds or property shall be made by the Trustee, it may retain or postpone such payment or delivery until actual adjudication of such dispute has been made in a court of competent jurisdiction or it shall have been indemnified against loss to its satisfaction.

#### 10.05 Fees or Expenses

The Trustee's fees or expenses for its services as Trustee shall be such as may be mutually agreed upon by the Employer and such Trustee. Any Trustee who is an employee of the Employer shall serve without compensation, but shall be reimbursed by the Employer for all reasonable expenses incurred on behalf of the Plan.

#### 10.06 Maintenance of Accounts and Records

The Trustee shall keep accurate and detailed records and accounts with respect to all assets included in the Trust Fund, and all investments, receipts and disbursements and other transactions involving the Trust, including individual and separate Voluntary Contribution Accounts for individual Employees participating in the Plan. All such accounts, books and records shall be open for inspection at all reasonable times by the Defined Contribution Committee or by any person or persons duly authorized by the Defined Contribution Committee or otherwise required by law. Within one hundred twenty (120) days following the close of each Plan Year of the Trust, the Trustees shall render to the Defined Contribution Committee accounts of its administration of the Trust during the period since the last Valuation Date. An independent auditor shall at the same time submit a report on the financial statements and administrative procedures.

#### 10.07 Valuation of Trust Fund

If the Trustee shall determine, in making any valuations under the terms of this Plan, that the Trust Fund, or any separately held account, consists in whole or in part of property not traded freely on a recognized market, or that information necessary to ascertain the fair market value thereof is not readily available, the Trustee may (but shall not be required to) request the Defined Contribution

Committee for instructions as to the valuation to be placed on such property. The Defined Contribution Committee shall, with the assistance of someone competent in such matters, determine the value of such property and such determination shall be conclusive and binding for all Plan purposes. If the Defined Contribution Committee shall fail or refuse to instruct the Trustee as to the value of any such property within the time permitted the Trustee to make any required valuation, the Trustee may place fair and reasonable value upon such property and shall not be liable to any of the parties enumerated in the preceding sentence for loss or damage in so doing.

10.08 Resignation or Removal of Trustee

The Trustee may resign at any time by giving ninety (90) days written notice to the County. The County may remove the Trustee at any time upon thirty (30) days written notice or immediately if the Trustee has breached its responsibilities under the Plan. In case of resignation or removal of the Trustee, said Trustee shall have the right of a settlement of accounts, which may be made at the option of the Trustee either by judicial settlement in any action in a court of competent jurisdiction, or by agreement of settlement between the Trustee and the Employer.

10.09 Approval of Trustee's Account

The written approval of any Trustee account by the Employer or the Defined Contribution Committee shall be final as to all matters and transactions stated or shown therein, and binding upon the Employer, Defined Contribution Committee, and all persons who then shall be or thereafter shall become interested in this Trust. Failure of the Employer or Defined Contribution Committee to notify the Trustee within ninety (90) days after receipt of any account of its disapproval of the account shall be the equivalent of written approval.

10.10 Appointment of Successor Trustee

Resignation or removal of the Trustee shall not terminate the Trust. In the event of vacancy in the Trusteeship of this Trust occurring at any time, the County shall appoint a successor Trustee. Any such successor Trustee shall have all the powers and duties herein conferred upon the original Trustee. The title to all Trust property shall automatically vest in a successor Trustee without the execution or filing of any instrument or the doing of any act, but the resigning or removed Trustee shall, nevertheless execute all instruments and do all acts which would otherwise be necessary to vest such title or record in any successor. The appointment of a successor Trustee may be effected by amendment to this Trust Agreement or by written action of the Employer without such amendment, the agreement of successor Trustee to act as such being evidenced by its execution of such amendment or of a copy of such resolution.

10.11 Payments to and Distributions from the Trust Fund

The Trustee shall, from time to time, on the written direction of the Plan Administrator, make payments out of the Trust Fund to such persons, in such manner, in such amounts, and for such purposes as may be specified in the written

directions of the Plan Administrator, and upon any such payment being made, the amount thereof shall no longer constitute a part of the Trust Fund.

Each such written direction shall be accompanied by a certificate of the Plan Administrator that the payment is in accordance with the Plan including, but not limited to, benefit payments; reasonable expenses of the Plan and Trust; return of contributions made subject to qualification or made in error. The Trustee shall not be responsible in any way with respect to the application of such payments or the Trust Fund to meet and discharge any and all liabilities under the Plan. In the event that any dispute shall arise as to the identity or rights of persons entitled to benefits hereunder, the Trustee may withhold payment of benefits until such dispute shall have been determined by a court of competent jurisdiction or shall have been settled by written stipulation of the parties concerned.

## **ARTICLE XI ADMINISTRATION OF PLAN**

### **11.01 The Defined Contribution Committee**

There shall be a Defined Contribution Committee consisting of nine members, consisting of the following positions: the County Administrative Officer, the Director of Human Resources, the Executive Director/Chief Investment Advisor of the San Bernardino County Employees Retirement Association, the Treasurer/Tax Collector, three members appointed by the County Administrative Officer, one member appointed by the San Bernardino Public Employees Association, and one member appointed by the Safety Employees Benefit Association. Other than the three members appointed by the County Administrative Officer, each member shall have one alternate. The appointed members shall serve at the pleasure of the County Administrative Officer. The elected County Auditor/Controller-Recorder shall serve as an ex-officio, non-voting member of the Defined Contribution Committee. The Defined Contribution Committee shall advise the Plan Administrator and the Board of Supervisors on all matters of policy affecting the Plan.

The Trustee shall be promptly notified of the original membership and any change in membership of the Defined Contribution Committee by the County Administrative Officer and, until so notified, the Trustee may assume the membership continues without change.

The members of the Defined Contribution Committee must discharge their duties solely in the interest of the Participants and must adhere to the same standard of conduct as outlined in Section 10.01.

In accordance with County Policy 01-12, each Defined Contribution Committee member is covered under the County's self-insured, self-administered Worker's Compensation program if injured while performing authorized appointee tasks.

If the authorized action of a member, while serving on the Committee, results in a claim against the County or a lawsuit against the County or the appointee, the County will provide a defense and pay any/all settlements or judgments provided the claim arises out of the member's acts within the scope of his or her official duties, the member requests such representation, and the member cooperates in the defense of the action. Punitive or willful or intentional malice damages may not be covered by the County.

If, while driving a personal vehicle on appointed Defined Contribution Committee business, a member is involved in a vehicle accident, primary liability is to be provided by the member's personal vehicle liability insurance company.

11.02 Power to Direct Investments

The Defined Contribution Committee may, if it chooses, direct, either verbally or in writing, the acts of the Trustee in investing, reinvesting, disposing of or encumbering the principal and income of the Trust. If the Defined Contribution Committee does not choose to direct the Trustee in investing or reinvesting, the Defined Contribution Committee reserves the right in any case to be consulted by the Trustee with regard to any and all investments, reinvestments, dispositions of or encumbrances of the principal and income of the Trust. The Defined Contribution Committee shall give the Trustee additional or clarifying directions, if the Trustee requests.

11.03 Investment Advisor or Managers

The County may hire one or more professional investment managers or advisors to direct the Trustee as to the investment of Plan assets.

11.04 Separate Investments

The Defined Contribution Committee may determine, in its discretion, that Participants shall be offered three (3) or more investment choices, such as, for example, a family of mutual funds. In such event, where applicable, a separate Account shall be maintained for each investment that a Participant has elected. The investment earnings and gains or losses and any applicable expenses shall be separately accounted for with respect to each investment fund.

The Defined Contribution Committee may also, in its discretion, permit individual Participants to direct the investment of a portion or all of their Accounts. No other person shall be liable for any loss due to the Participant's exercise of control.

11.05 Power to Interpret and Administer Plan

The Plan Administrator shall determine all questions regarding interpretation, application and administration of the Plan, and its determination of any questions shall be final. Without limiting the powers set forth above, the Plan Administrator shall have the power: to construe the Plan; to determine all questions and make rules relating to the administration of the Plan and the eligibility of Employees; to authorize all disbursements by the Trustee from the Trust; to modify the investment

program; to accept Employee Voluntary Contributions pursuant to Article III; and to compute and certify to the Trustee the benefits payable to Participants.

11.06 Employer Shall Supply Information

The Employer shall supply to the Plan Administrator or its designee full and timely information on all matters relating to the compensation of the Participants, their employment, retirement, death, or other termination, and all such other pertinent facts as the Plan Administrator or its designee may require. The Plan Administrator shall furnish the Trustee such information as the Trustee may require in carrying out its duties under the Plan.

11.07 Compensation of Defined Contribution Committee Members and Plan Administrator

Each Defined Contribution Committee member shall serve without compensation for his services, but shall be reimbursed by the Employer for all reasonable expenses.

11.08 Plan Expenses

The County, the Defined Contribution Committee, and/or the Plan Administrator may hire outside administrators, advisors, or other persons to assist in the administration of the Plan. Resultant expenses and any other expenses of the Plan shall be paid either by the County or by the Plan, at the County's discretion. Expenses paid by the Plan may be allocated equitably over the Accounts of Participants.

**ARTICLE XII  
INVESTMENT OF TRUST FUNDS**

12.01 Plan Establishes Trust Fund

The Plan establishes a Trust Fund consisting of such monies or other property as the Employer from time to time deposits with the Trustee.

The Contributions of the Employer and Participants shall be deposited in the Trust Fund and shall be held, together with all other assets of the Plan, except insurance contracts and assets of any insurance company which has issued contracts under or holds assets of the Plan, shall be held in trust by one or more Trustees. The County shall appoint the Trustee or Trustees. Upon acceptance, those being named or appointed as Trustee or Trustees shall have exclusive authority and discretion to manage and control the assets of the Plan, except to the extent that the Defined Contribution Committee or an outside investment manager or advisor shall properly direct the Trustee.

12.02 Trust Fund for Benefit of Participants

No person shall have the rights or interest in or to the Trust or the Trust Fund, or any part thereof, except as expressly provided herein. Notwithstanding any other provisions hereof, or any amendments hereof to the contrary, at no time shall the

Trust Fund, or any part thereof, revert to or become the property of the Employer to be used for or diverted to purposes other than for the exclusive benefit of Participants and former Participants or their respective Beneficiaries or estates, or for the administrative expenses of the Trust and the Plan, except as otherwise herein specifically provided.

12.03 Authorized Investments and Reinvestments

The Trustee accepts the Trust and agrees to perform the obligations imposed by this Plan.

The Trustee shall make investments and reinvestments (except as the Trustee may otherwise be directed by the Defined Contribution Committee).

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

13.01 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 vested 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.

13.02 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.

**ARTICLE XIV  
MISCELLANEOUS PROVISIONS**

14.01 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.

#### 14.02 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.

#### 14.03 Assignment or Alienation of Benefits

Except pursuant to a domestic relations order, any benefit payable under the Plan is not subject in any manner to assignment, alienation, anticipation, sale, transfer, pledge, garnishment, encumbrance, lien or charge. Any attempt to cause any benefit to be so subjected will not be recognized except to the extent required by law.

Subject to the procedures established by the Plan Administrator pursuant to the provisions of this Plan, benefits may be paid from the non-forfeitable balance of a Participant's Account in accordance with a domestic relations order as defined in Section 414(p)(1)(A)(i) of the Internal Revenue Code without regard to whether the Participant has attained the "earliest retirement age," as defined in Section 414(p) of the Code.

#### 14.04 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

#### 14.05 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.

#### 14.06 Governing Law

The Plan will be construed and interpreted in accordance with the laws of the State of California, to the extent federal laws do not control.

14.07 Effect of Invalidation of Specific Provision

If any provision of the Plan is held to be invalid or unenforceable, the other Plan provisions will not be affected, but will be applied as if the invalid or unenforceable provision had not been included in the Plan.

14.08 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, the Plan shall be deemed to have been amended to be in conformity with said laws or regulations.

IN WITNESS WHEREOF, the County of San Bernardino has adopted the amended Plan and caused this instrument to be executed by its officers duly authorized, this 23rd day of February, 2010.

COUNTY OF SAN BERNARDINO

BY:

\_\_\_\_\_  
Gary C. Ovitt, Chairman, Board of Supervisors

## APPENDIX A

# RULES AND REGULATIONS OF THE PARTICIPANT LOAN PROGRAM OF THE COUNTY OF SAN BERNARDINO 401(k) DEFINED CONTRIBUTION PLAN

### **SECTION 1 ADMINISTRATION**

The Plan Administrator of the San Bernardino County 401(k) Defined Contribution 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 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 of:

- (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 Loan 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 Internal Revenue Service Code Section 267(c)(4)] of the Participant.

(c) Limitations on 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 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 Trustee 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 five (5) years; 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 cease to accrue during the period of leave 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

subsection (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. Partial prepayments shall not be permitted.
- (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 as a qualified plan under Code Sections 401(a) and 401(k), 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 Administrator, 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 borrower'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