



THE SAN BERNARDINO COUNTY SECTION 457(f) DEFERRED COMPENSATION PLAN

Adopted by the Board of Supervisors, November 30, 1993
Amendment approved by the Board of Supervisors, June 3, 2003
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TABLE OF CONTENTS

INTRODUCTION	1
ARTICLE I - NAME; EFFECTIVE DATE	2
ARTICLE II - DEFINITION	2
ARTICLE III - ADMINISTRATION	5
ARTICLE IV - ELIGIBILITY.....	5
ARTICLE V - ENROLLMENT	5
ARTICLE VI - CHANGE OF ENROLLMENT	6
ARTICLE VII - TERMINATION OF EMPLOYMENT	7
ARTICLE VIII - SECTION 457(f) FUND.....	7
ARTICLE IX - PARTICIPANT ACCOUNT	8
ARTICLE X - DISTRIBUTION OF BENEFITS	9
ARTICLE XI - LEAVE OF ABSENCE	10
ARTICLE XII - ADMINISTRATIVE COSTS	10
ARTICLE XIII - TERMINATION OR AMENDMENT.....	11
ARTICLE XIV - MISCELLANEOUS	11
ARTICLE XV - NONASSIGNABILITY	12
ARTICLE XVI - COPIES OF THIS PLAN.....	13
ADOPTION	13

**THE SAN BERNARDINO COUNTY
SECTION 457(f) DEFERRED COMPENSATION PLAN**

INTRODUCTION

In 1978, the Federal Government passed a law, Section 457(b), of the Internal Revenue Code, which allows state and local government employees to defer a strictly limited portion of their annual Compensation to provide for their future income. Under Internal Revenue Code Section 457(f), the County of San Bernardino may provide you with an opportunity to contribute an unlimited portion of your annual Compensation to a deferred compensation plan before state and federal taxes are withheld, provided the deferred amounts are subject to a substantial risk of forfeiture. Therefore, you would pay no current income tax on the money you contribute to a Section 457(f) Deferred Compensation Plan. Furthermore, any earnings or gains realized by investing the deferred amounts would be excluded from your gross income until it is actually paid or otherwise made available.

The substantial risk of forfeiture provided for in the Plan is the requirement that you continue to provide employment services to the County. Therefore, you would forfeit deferred compensation amounts if you terminate employment prior to the completion of the requisite period of service.

This is a major benefit for the County's eligible employees, which can save you taxes today and provide savings for your future. Deferring Compensation under this Plan can:

1. Reduce current federal and state income and FICA taxes. (Employee deferral amounts are not subject to FICA and are not reported as wages on your annual W-2 form until the substantial risk of forfeiture has lapsed.)
2. Supplement retirement income.
3. Defer taxes on your contributions and interest earnings.
4. Increase your financial independence at retirement.

Questions should be directed to the Employee Benefits and Services Division, Human Resources Department, (909) 387-6053.

**THE SAN BERNARDINO COUNTY
SECTION 457(f) DEFERRED COMPENSATION PLAN**

**ARTICLE I
NAME; EFFECTIVE DATE**

The name of this Plan is the San Bernardino County Section 457(f) Deferred Compensation Plan (hereinafter referred to as the "Plan"). This Plan has been established to supplement the amount of deferred compensation available under the County of San Bernardino Deferred Compensation Plan, an eligible deferred compensation plan which is subject to the limits imposed by Section 457(b) of the Internal Revenue Code.

The provisions of this Plan as stated herein shall be effective January 1, 2005. All deferrals on or before December 31, 2004 shall be subject to the provisions of the Plan as it existed on October 3, 2004, a copy of which is incorporated herein by reference and made a part hereof.

**ARTICLE II
DEFINITIONS**

For the purpose of this Plan, certain words or phrases used herein will have the following meanings.

2.01 Beneficiary

Beneficiary means a death beneficiary designated by the Participant, his/her estate, or any other person whose interest in the Plan is derived from the Participant. Any designation of a Beneficiary shall be by written instrument filed with the County and shall be revocable unless otherwise provided in the Beneficiary designation instrument. If a Participant does not file a Beneficiary designation with the County, his/her Beneficiary shall be the estate of such Participant.

2.02 Board of Supervisors

Board of Supervisors shall mean the Board of Supervisors of the County of San Bernardino.

2.03 Compensation

Compensation shall mean wages payable to Eligible Employees attributable to services performed for the County.

2.04 County

County shall mean the County of San Bernardino, including Special Districts governed by the Board of Supervisors of the County of San Bernardino, provided that the Plan Administrator, or the designee for that purpose, shall exercise on

behalf of the County any discretion or other function given to the County under the Plan.

2.05 County Contribution

County Contribution shall have the meaning ascribed in Article V, Section 5.02.

2.06 County Contribution Subaccount

County Contribution Subaccount shall have the meaning ascribed in Article IX.

2.07 Deferral Effective Date

Deferral Effective Date shall have the meaning ascribed in Article V, Section 5.01, subsection (b).

2.08 Deferral Period

Deferral Period shall have the meaning ascribed in Article V, Section 5.01, subsection (b).

2.09 Deferred Compensation

Deferred Compensation shall mean the amount of Compensation not yet earned, which the Participant and the County mutually agree shall be deferred in accordance with the provisions of the Plan.

2.10 Defined Contribution Committee

Defined Contribution Committee shall mean an advisory 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 Association, 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 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.

2.11 Disability

Disability shall mean a permanent and total disability. An individual is permanently and totally disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. An individual shall not be considered to be permanently and totally disabled

unless he furnishes proof of the existence thereof in such form and manner, and at such times, as the Plan Administrator may require.

2.12 Earnings Subaccount

Earnings Subaccount shall have the meaning ascribed in Article IX.

2.13 Eligible Employee

Eligible Employee shall mean any Employee who is in the Exempt Occupational Unit or who is an elected official or a Board Governed Special District employee who is entitled to Exempt benefits. Eligible Employee shall also include contract employees whose contract specifically provides for participation in the Plan. While in office, each elected official shall be an Eligible Employee, whose failure to continue to hold elected office will be treated as a Retirement from the County. Eligible Employee does not include: (i) any Employee who is a member of a collective bargaining unit and who is covered by a collective bargaining agreement, which agreement does not specifically provide for coverage of such Employee under this Plan, provided that retirement benefits were the subject of good faith bargaining between Employee representatives and the County; (ii) any non-resident alien who has no earned income from sources within the United States; or (iii) any leased Employee within the meaning of Section 414 (n) (2) of the Internal Revenue Code who are not otherwise eligible under this Article II.J.

2.14 Employee

Employee shall mean an individual employed by the County, any portion of whose income is subject to withholding of income tax and/or for whom Social Security contributions are made by the County, as well as any other individual qualifying as a common law Employee of the County.

2.15 Employee Deferral Subaccount

Employee Deferral Subaccount shall have the meaning ascribed in Article IX.

2.16 Participant

Participant means an individual who is eligible to defer Compensation under the Plan as detailed in Article IV.

2.17 Participant Account

Participant Account shall have the meaning ascribed in Article IX.

2.18 Plan Administrator

Plan Administrator shall mean the County Human Resources Chief, Employee Benefits and Services Division.

2.19 Plan Year

Plan Year shall mean the calendar year with the first Plan Year commencing on the Plan's effective date and ending December 31, 2005.

2.20 Retirement

Retirement shall mean retirement from County service through applying for and obtaining retirement benefits through the San Bernardino County Employees Retirement Association and, in the case of an elected official, termination of employment by virtue of failure to continue to hold the elected office.

2.21 Section 457(f) Fund

Section 457(f) Fund shall have the meaning ascribed in Article VIII.

2.22 Termination for Cause

Termination for Cause shall occur if Participant had theretofore been convicted by a federal, state or local authority for, or pleaded guilty to, an act constituting a felony.

2.23 Termination of Service

Termination of Service shall mean the severance of the Participant's employment or contract with the County prior to Retirement.

ARTICLE III ADMINISTRATION

The Plan Administrator shall have full authority and discretion to adopt rules and regulations for the administration of the Plan and to interpret, alter, amend or revoke any rules and regulations so adopted. All forms shall be approved by the Plan Administrator.

ARTICLE IV ELIGIBILITY

All Eligible Employees of the County may elect to become Participants in this Plan in accordance with Article V.

ARTICLE V ENROLLMENT

5.01 Employee Deferrals

(a) Each Eligible Employee who desires to become a Participant in the Plan and defer Compensation for any Plan Year shall file a written enrollment election with the Plan Administrator. For the Plan Year beginning January 1, 2005, no deferrals shall be permitted except to the extent already elected during December 2004 in an election accepted by the County.

(b) For all Plan Years beginning on or after January 1, 2006, the Plan will be open for enrollment during the December preceding the first day of each Plan Year. Any election made during the month of December will be effective for the Plan Year commencing on the next following January 1

(the "Deferral Effective Date") unless the election is not accepted by the County. The elected Compensation amount shall be deferred, and subject to a substantial risk of forfeiture as provided in Article X, Section 10.01, subsection (c), for a period commencing on the date the deferred amount would otherwise have been paid to the Participant pursuant to the County's normal payroll procedure, and ending on such date not earlier than January 1 constituting the third anniversary of the Deferral Effective Date (the "Deferral Period") as shall be specified by the Participant in the election.

- (c) The election shall specify the amount by dollar amount or percentage, which is to be deferred pursuant to the Plan out of the Compensation otherwise payable to the Participant. Such deferred amount shall not be less than any amount per biweekly pay period as determined by the Plan Administrator and shall not exceed a Participant's annual Compensation. The election to defer a specified dollar amount or percentage of Compensation shall thereafter continue in full force and effect with respect to the Participant's Compensation for the Plan. A revocation is permitted during 2005 and will become effective on January 1, 2005, provided such revocation is filed with the County on or before December 31, 2005. In all other instances, no revocation shall be permitted.
- (d) Upon a Participant ceasing to qualify as an Eligible Employee, his/her election to defer income shall forthwith terminate, effective upon the date eligibility terminated. Upon revocation of the election to defer income, other than by termination of the Plan as provided in Article XIII, the amounts deferred shall remain in the applicable Employee Deferral Subaccount, and the County shall make distributions thereof at the time and in the manner provided in Article X of the Plan.

5.02 County Contributions

Each Plan Year, at the sole and absolute discretion of the Board of Supervisors, the County may determine to make a contribution to the Plan out of its revenue for the current fiscal year on behalf of any Participant. There is no limit to the time or amount of any County Contribution, and any County Contribution shall be subject to a substantial risk of forfeiture as described in Article X, Section 10.02, subsection (b).

**ARTICLE VI
CHANGE OF ENROLLMENT**

Any enrollment change made by a Participant for a Plan Year cannot increase or decrease Deferred Compensation amounts previously deferred. The County's consent to enrollment and changes in enrollment shall be deemed effective upon the timely

submission of the appropriate form(s), provided the Participant's requests are consistent with the provisions of this Plan and applicable rules and regulations (see Article III).

ARTICLE VII TERMINATION OF EMPLOYMENT

Upon a Participant's Termination of Service or Retirement, (a) any agreements to defer compensation will be deemed to have been revoked, and (b) his/her Employee Deferral Subaccount shall be forfeited and/or shall become distributable, as determined under Article X, Section 10.01, subsections (c) and (d).

ARTICLE VIII SECTION 457(f) FUND

The County shall establish under this Plan an investment account to be known as the "Section 457(f) Fund." The County shall credit to the Section 457(f) Fund amounts equal to the total amounts of Compensation deferred by the Participants under this Plan, all County Contributions made on behalf of Plan Participants, and all net earnings and gains or losses credited thereon. The assets of the Fund shall be invested in accordance with this Article VIII.

The Section 457(f) Fund shall at all times remain a part of the general assets of the County and shall remain available for the payment of County debts. Neither the existence of the Plan nor the Section 457(f) Fund shall be deemed to create a trust, and the County shall at all times be the legal and beneficial owner of all assets of the investment account. All amounts of Compensation deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall remain (until paid or made available to the Participant or other Beneficiary) solely the property and rights of the County (without being restricted to the provision of benefits under the Plan) subject only to the claims of the County's general creditors.

Neither the existence of the Plan nor the Section 457(f) Fund shall entitle any Participant, the Beneficiary of any Participant or a creditor of any Participant to a claim or lien against the assets of the investment account. The Participant and his/her Beneficiary shall have only the right to receive the benefits payable under the Plan.

All contributions (Employee deferrals and County Contributions) shall be invested in such vehicles as directed by the Participant pursuant to the following provisions of this Plan. Each Participant shall have the right to elect from among one or more separate and distinct investment vehicles designated, from time to time, by the Plan Administrator, the percentage of his Participant Account(s) which he wishes to have invested in each vehicle. The Plan Administrator, at its discretion, may make available to the Participant one (1) or more of the following investment options:

- (a) A "Money Market Fund" wherein monies contributed by the Participant will be invested in money market certificates with a bank and/or savings and loan association;
- (b) A "Fixed Income Fund" wherein monies contributed by the Participant will be invested in contracts issued by, and providing for interest rate(s) guaranteed by, an insurance company licensed to do business in the State of California or such other type of investments geared to provide a high degree of protection of capital with a reasonable rate of return thereon;
- (c) An "Equity Fund" wherein monies contributed by the Participant will be invested primarily in common stocks and such other securities or investment opportunities which provide for capital appreciation; and
- (d) Such other investment vehicle, which, in the opinion of the Plan Administrator, may be appropriate to meet the investment goals of a substantial portion of active Participants.

Participants shall be permitted to change their election of an investment vehicle and/or the percentage to be allocated to each option out of future deferrals as permitted by the Plan Administrator. Participants may change the options in which their prior contributions are invested not more often than four (4) times a year. Such change shall be effective only as of the next following January 1, April 1, July 1 or October 1 unless the Plan Administrator, in its sole discretion, agrees to another date. Participants must notify the Plan Administrator of any such change in writing on the specified form, not later than the last day of the quarter preceding the quarter in which the change is to be effective.

ARTICLE IX PARTICIPANT ACCOUNT

The County shall maintain, or cause to be maintained, a separate account ("Participant Account") for each Participant for each Plan Year in which any amount of Compensation is deferred or a County Contribution is made. The Participant Account shall contain subaccounts to record Employee deferrals for each Plan Year (the "Employee Deferral Subaccounts") separate from any County Contributions (the "County Contribution Subaccount"). Each subaccount shall be credited an amount equal to the Deferred Compensation of the Participant or County Contribution for the Participant for that Plan Year, as the case may be. Each Participant's Earnings Subaccount shall further be credited quarterly with earnings and gains (or losses) applicable thereto, for the preceding quarter, less any charges for administrative costs (see Article XII).

The County will furnish to each Participant statements of his/her Participant Account(s) at such times as determined by the Plan Administrator. The account statements will disclose:

- (a) The accumulated amounts of Compensation which have been deferred to each Employee Deferral Subaccount.
- (b) The aggregate amount of County Contributions to each County Contribution Subaccount.
- (c) Any amounts credited or debited to the Participant Account(s) by way of interest, dividends, gains or losses applicable to his/her Deferred Compensation and/or any County Contributions made on his/her behalf.
- (d) The balance credited to such Participant Account(s).

**ARTICLE X
DISTRIBUTION OF BENEFITS**

10.01 Employee Deferrals

- (a) Distribution of amounts credited to an Employee Deferral Subaccount shall be made in a lump sum payment of an amount equal to the account balance of the applicable Employee Deferral Subaccount, not less than sixty (60) days after the date originally elected by the Participant, unless the Participant had previously elected, in writing, to further defer the Employee Deferral Subaccount balance.
- (b) Any election made by a Participant to further defer the receipt of the Employee Deferral Subaccount balance shall be made during December not less than 12 months after the date on which the election is made and not less than 12 months prior to the expiration of the otherwise required Deferral Period. An election to further defer amounts must be for at least an additional five (5) year period commencing on the date the deferred amount would otherwise have been first distributable to the Participant pursuant to the provisions of this. There is no limit to the number of times a Participant may elect, prior to his/her Termination of Service or Retirement, to further defer the distribution of the Employee Deferral Subaccount; each additional deferral continues to subject the Participant Account to a substantial risk of forfeiture, as described in Article X, Section 10.01, subsection (c) below.
- (c) In the event of a Participant's voluntary Termination of Service with the County, or a Termination for Cause by the County, prior to the expiration of the applicable Deferral Period, Employee Compensation amounts credited to the Participant's Employee Deferral Subaccount shall be forfeited.
- (d) In the event of death, Disability, Retirement or termination of employment by the County (other than a Termination for Cause), all amounts in the

Participant's Employee Deferral Subaccount shall be distributed to the Participant, or his/her Beneficiary(ies) if the distribution is on account of death, in a lump sum not later than ninety (90) days after termination of employment.

10.02 County Contributions

- (a) Distributions of amounts credited to each Participant's County Contribution Subaccount shall be made in a lump sum payment ninety (90) days after Retirement, death or termination of employment by reason of Disability, to the Participant, or to Beneficiary(ies) if this distribution is on account of death.
- (b) In the event of a Participant's termination of employment for any reason other than Retirement, death or Disability, all amounts in the Participant's County Contribution Subaccount shall be forfeited.

10.03 Earnings

- (a) Distributions of amounts credited to each Participant's Earnings Subaccounts shall be made at the same time as the distribution from the applicable Employee Deferral Subaccount or County Contribution Subaccount unless otherwise elected pursuant to (b) below.
- (b) Notwithstanding the foregoing, a Participant may, with the approval of the Plan Administrator, elect to have all net earnings and gains credited to his Earnings Subaccounts distributed in equal installment amounts over a specified period of years provided that the Participant has made an irrevocable election to such installments at least sixty (60) days prior to the date distribution is to begin under the terms of this Plan.

**ARTICLE XI
LEAVE OF ABSENCE**

Approved leave of absence with pay shall not affect the Participant's agreement to participate in this Plan.

Approved leave of absence without pay shall be considered to be temporary revocation of the Participant's agreement to participate in this Plan. Participation in the Plan will be automatically reinstated as of the first day of the next period subsequent to the termination of the leave of absence status.

**ARTICLE XII
ADMINISTRATIVE COSTS**

The Plan Administrator shall determine, in a manner it deems fair and equitable, the cost to the County General Fund of investing and administering the Section 457(f) Fund.

The County General Fund shall recover such costs, in the County Treasury for which the Treasurer is the investment officer.

ARTICLE XIII TERMINATION OR AMENDMENT

13.01 Termination

The County may, at any time, terminate this Plan. Upon such termination, the Participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination, and the Participant's full Compensation will be thereupon restored on a nondeferred basis. The County agrees to pay such Participants the amounts credited to their Employee Deferral Subaccount(s) (as adjusted for investment experience hereunder) determined as if the Participant had involuntarily terminated his/her employment. In that event, the Participant will not forfeit any portion of his/her Participant Account(s) including any County Contributions.

13.02 Amendment

The County may also amend the provisions of this Plan at any time provided, however, that no amendment shall affect the rights of Participants or their Beneficiaries to the receipt of payment of benefits, to the extent of any Compensation deferred at the time of the amendment as adjusted for investment experience hereunder prior to and subsequent to the amendment.

ARTICLE XIV MISCELLANEOUS

- A. The Plan shall not be construed as giving any Participant any right to continue his/her employment or contract with the County.
- B. The Plan has been adopted in the State of California and shall be construed and governed in all respects under and by the laws of said state.
- C. The captions used in the Plan are for the purpose of convenience only and shall not limit, restrict or enlarge the provisions of the Plan.
- D. 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.
- E. As used in the Plan, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others unless the context clearly indicates otherwise.
- F. Any notice or other communications required or permitted under the Plan shall be in writing and, if directed to the County, shall be sent to the Human Resources

Chief, Employment Benefits and Services Division at his/her principal office and, if directed to a Participant or to a Beneficiary, at his/her last known address as it appears on the County's records.

- G. Deductions for Employee contributions to retirement systems shall be made without reference to amounts deferred pursuant to this Plan, and shall be based upon the gross Compensation a Participant would receive if the Participant had not elected to defer income under this Plan.
- H. The County shall have the right to contract for administration, accounting and investment services with regard to operation of the Plan.
- I. The Plan is intended to be subject to federal income taxation as an "ineligible deferred compensation plan" under Section 457(f) of the Internal Revenue Code and shall be interpreted and administered in a manner consistent with Section 457(f).

ARTICLE XV NONASSIGNABILITY

It is agreed that neither the Participant nor his/her Beneficiary nor any other designee shall have any right to commute, sell, assign, transfer or otherwise convey the right to receive any payments hereunder which payments and right thereto are expressly declared to be nonassignable and nontransferable; and 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 his/her agreement(s) to defer Compensation under this Plan. In the event that a Participant commits or attempts to commit any act proscribed or not permitted under this Plan, the County shall be relieved of all liability under the Plan. Except as otherwise required by law notwithstanding this provision, and Compensation deferred or benefits paid pursuant to this Plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency.

**ARTICLE XVI
COPIES OF THIS PLAN**

A copy of this Plan shall be made available to each Eligible Employee prior to his/her enrollment in 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 8th day of November, 2005.

COUNTY OF SAN BERNARDINO

BY: _____
Bill Postmus, Chairman, Board of Supervisors