

## **COUNTY OF KERN CALIFORNIA DEFERRED COMPENSATION PLAN**

The County of Kern, California Deferred Compensation Plan, established and adopted by the Kern County Board of Supervisors (hereinafter "Board of Supervisors") on October 2, 1979 for the sole benefit of its Eligible Employees is hereby amended and restated by the Kern County Board of Supervisors on March 12, 2019.

### **ARTICLE I**

#### **Name & Purpose**

1.01 Plan Name: "County of Kern, California Deferred Compensation Plan" (hereinafter referred to as the "Plan").

1.02 Purpose: To permit the County's Eligible Employees to defer portions of their Compensation until death, Severance from Employment, or other qualifying events provided herein in accordance with §53213 through §53214, inclusive, of the California Government Code. The Plan constitutes an "eligible State deferred compensation plan" within the meaning of Internal Revenue Code §457(b) and Government Code §53213, et seq.

### **ARTICLE II**

#### **Definitions**

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

2.01 "Administrator" means the Kern County Treasurer-Tax Collector, located at 1115 Truxtun Avenue, 2<sup>nd</sup> Floor, Bakersfield, California 93301-4639.

2.02 "Adopting Employer" means an eligible employer under §457(e) of the Code and Article XII herein which elects to adopt this plan on behalf of its employees through execution of an adoption agreement with the County of Kern.

2.03 "Advisory Committee" means that body designated by the Board of Supervisors to operate and oversee the Plan.

2.04 "Beneficiary" means a person who is entitled to benefits in respect of a Participant following the Participant's death as designated by a Participant pursuant to Section 7.05 or an alternate payee as described in §1.457-10(c).

#### **2.05 "Catch-Up Provisions"**

(a) "Catch-Up over Age 50" means the annual deferral for Participants age 50 or older as permitted under §414(v) and described in §1.457(c)(2) to the extent the amount of the annual deferral for the Participant for the taxable year is permitted to exceed the basic plan ceiling.

(b) "Special §457 Catch-Up" means the special §457 Catch-Up as described in §457(b)(3) and §1.457-4(c)(3) to the extent the amount of the annual deferral for the Participant for the taxable year is permitted to exceed the basic plan ceiling under §457(b)(2) and §1.457-4(c)(1).

2.06 "Code" means the 1986 Internal Revenue Code, as amended from time to time. Reference to a specific section in the Code shall include any

section, any regulation(s) promulgated thereunder, and any future legislation amending, supplementing or superseding such section or regulation(s).

2.07 "Compensation" means the total amount paid by the Employer for services rendered to the Employer for an Employee's service during a Plan Year as expressed on the Employee's IRS Form W-2, without deduction for any portion thereof deferred under the provisions of this Plan, Code §403(b) and §501(c)(18) or other provisions of the Code. Compensation shall be taken into account at its present value.

2.08 "Deferred Compensation" means that portion of an Employee's Includible Compensation which the Participant has deferred pursuant to this Plan, and any matching contributions made pursuant to Section 9.02 of Article IX.

2.09 "Deferred Compensation Fund" means the total amount of Deferred Compensation, including interest and other amounts accrued thereon, from all Participants, which amount shall be held in trust or custody exclusively for the benefit of Participants and Beneficiaries.

2.10 "Disability" means substantial permanent incapacity, physical or mental, to perform the Participant's usual duties in the Employer's Employment as determined by the Employer on the basis of medical examination and advice.

2.11 "Eligible Employee" means the following:

1. All common-law Employees of the County, or
2. Employees given eligibility in the Plan by contractual agreement

with the County and approved by the Board of Supervisors.

Notwithstanding the foregoing, employees who are Participants in the Kern County Deferred Compensation Plan Part-Time, Seasonal, Temporary Plan are not eligible to participate in this Plan.

2.12 "Eligible State Deferred Compensation Plan" means a plan described in Code §457(b) and Government Code §53213, et seq.

2.13 "Employee" means any person employed by the County and who is on the County's Payroll. 'Payroll' for purposes of this Section 2.13 means the system used by the County to pay those individuals the County treats as its Employees for their services and to withhold employment taxes from the compensation it pays to such Employees. The term 'Employee' does not include independent contractors. If, during any period, the County does not treat an individual as an Employee, and, for that reason, does not withhold employment taxes with respect to that individual, then that individual shall not be an Employee for that period, even in the event that the individual is determined retroactively to have been a common law employee during all or any portion of that period. An individual's status as an Employee shall be determined by the County, and such determination shall be conclusive and binding upon all persons.

2.14 "Employer" means the County of Kern, a political subdivision of the State of California or an Adopting Employer under Article XII.

2.15 "Employment" means employment of an Employee by the Employer.

2.16 "Employment Period" or "Pay Period" means the bi-weekly period established by the Employer during which occurs service of an Employee for the Employer upon which Compensation is based.

2.17 "Enrollment Period" means the period commencing January 1 through and including December 31.

2.18 "Includible Compensation" An employee's actual gross income for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under Code § 401(a)(17)).

2.19 "Normal Retirement Age" age 70½, unless the Participant has elected an alternate Normal Retirement Age and delivered such election to the Administrator prior to beginning Special §457 Catch-Up contributions as described in Section 4.02(a) of the Plan.

For Participants eligible to receive benefits under the Employer's basic defined benefit pension plan, a Participant's alternate Normal Retirement Age may not be earlier than the earliest date the Participant has the right to retire and receive immediate retirement benefits under such pension plan, without actuarial or similar reduction because of retirement before some later specific age, and the date selected may not be later than age 70½.

If the Participant is not eligible to receive benefits under a basic defined benefit pension plan, the Participant's alternate Normal Retirement Age may not be earlier than age 65 nor later than age 70½.

A special rule shall apply to qualified police or firefighters under the Plan, if any. Any qualified police or firefighter, as defined under Code § 415(b)(2)(H)(ii)(I), who is participating in the Plan may choose a Normal Retirement Age that is not earlier than age 40 nor later than age 70½.

2.20 "Optional Distribution Date" means April 1 of the calendar year following the calendar year in which a Participant attains 70 ½ years of age.

2.21 "Participant" means any Eligible Employee who has fulfilled the requirements of enrollment in the Plan.

2.22 "Participant Account" means the trust or custodial account for each Participant which is credited to the Participant's Deferred Compensation, together with any interest, dividends, gains, losses, expenses or the like credited or debited thereto exclusively for the benefit of the Participant or Beneficiary.

2.23 "Participation Agreement" means the written agreement executed in writing or electronically and filed by an Eligible Employee with the Plan Administrator or his or her designee pursuant to Article III herein, in which such Eligible Employee elects to become a Participant in the Plan, as amended from time to time.

2.24 "Plan" means this County of Kern, California Deferred Compensation Plan.

2.25 "Plan Year" means calendar year.

2.26 "Required Distribution Date" means April 1 of the calendar year following the calendar year in which a Participant attains 70 ½ years of age and has Severed from Employment.

2.27 "Severance from Employment" means the Participant's death, retirement upon Normal Retirement Age or permanent disability, resignation, discharge or termination from service as provided in Regulation §1.457-2(h)(2).

2.28 "State" means the State of California and the political subdivisions thereof.

2.29 "Unforeseeable Emergency" means severe financial hardship to a Participant resulting from an illness or accident of the Participant or of a dependent (as defined in Code §152(a) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant as defined in Code §457 and §1.457-6(c). Whether a hardship constitutes an Unforeseeable Emergency under Section 7.09 of the Plan shall be determined in the sole discretion of the Deferred Compensation Plan Advisory Committee or their designee.

2.30 "Other Definitions" All other terms in this Plan not defined in this Article shall be interpreted and defined within the meanings given by applicable sections of the Code, and State and federal statutes.

### **ARTICLE III Participation**

3.01 Deferral of Compensation. Compensation shall be deferred for any bi-weekly period only if a Participation Agreement providing for such deferral has been timely entered into by the Eligible Employee and the Employer during the enrollment period.

3.02 Enrollment Period. During the enrollment period, any Eligible Employee may elect to become a Plan Participant by executing a Participation Agreement and filing it with the Plan Administrator or his or her designee so that it is received prior to the first day of the month in which the deferral will become effective. A Participation Agreement shall become effective on the next available bi-weekly payday in the month following the date on which the signed Participation Agreement is filed with the Plan Administrator. The Participation Agreement shall remain in full force and effect unless Severance from Employment occurs or the Participation Agreement is amended. Prior to the execution of a Participant Agreement, the Plan Administrator has the authority to and may cause the establishment of an account for an Eligible Employee for the purpose of facilitating on-line enrollment unless the eligible employee opts out. Under no circumstances will the establishment of a Participant Account include any Deductions if the establishment of the Participant Account is prior to the execution of a Participant Agreement.

3.03 Amount of Deferral. Each written or electronic election to participate in the Plan shall specify the dollar amount or percentage of Compensation to be deferred. The amount to be deferred pursuant to such election will be deducted from the Compensation payable to the Participant. The total of all Deferred Compensation under the Plan on behalf of a Participant for any taxable year may not exceed the limits set forth in Article IV of this Plan.

3.04 Changes in Amount of Deferral. The Participant may elect to increase or decrease the amount of Compensation to be deferred by executing an amended Participation Agreement. An election by a Participant to amend his or her Participation Agreement for the sole purpose of increasing or decreasing the amount of Compensation to be deferred shall not be deemed a termination of the Participant's participation in the Plan.

3.05 Investment Direction and Objectives. If the Plan Administrator, with the approval of the Deferred Compensation Advisory Committee, chooses to designate one or more investment options in which Participants may direct investment of their Account, Participants shall have the option to direct the investment of their Account from among the investment options designated by the Plan Administrator. The Trustee or Custodian, as applicable, shall hold title to such investment options. A Participant's right to direct the investment of Account balances shall apply only to making selections among the options made available under the Plan and only to the extent specified by the Plan Administrator pursuant to uniform rules. All amounts invested, including the earnings thereon, remain the property of the Participant or Beneficiary and are for the exclusive benefit of the Participant or Beneficiary.

(a) Each Participant shall designate on the form prescribed by the Plan Administrator the one or more investment options in which he or she wishes to have his Account invested and may change such investment direction in accordance with and at the time or times specified under uniform rules established by the Plan Administrator or the investment provider, as applicable. The Participant's Account shall be debited or credited as appropriate to reflect all gains or losses on such investments.

(b) Neither the Employer, the Plan Administrator, the Trustee, the Custodian nor any other person shall be liable for any loss incurred by virtue of following the Participant's directions or by reason of any reasonable administrative delay in implementing such directions.

(c) The Plan Administrator may from time to time change the investment options made available under the Plan pursuant to uniform rules established by the Plan Administrator. If the Plan Administrator eliminates an investment option, all Participants who had chosen that investment option shall select another option. If the Participant does not select a new option, money remaining in the eliminated investment option shall be reinvested at the direction of the Plan Administrator. The Participants shall have no right to require the Plan Administrator to select or retain any investment option. Any change with respect to investment options made by the Plan Administrator or a Participant, however, shall be subject to the terms and conditions (including any rules or procedural requirements) of the affected investment options.

3.06 Termination other than by separation from Employment. Either the Participant or the Employer may terminate the Participant's participation in the Plan, for reasons other than by the Participant's Severance from Employment by written notice to the other party prior to the commencement of the Pay Period for which the revocation is effective. If participation in the Plan is terminated by the Employer, the Participant cannot elect to reinstate the deferral of Compensation

until the Employer, by written notice, advises the Participant that reinstatement in the Plan is available. No amounts shall be payable to a Participant upon termination of participation in the Plan unless otherwise due pursuant to Article VII of this Plan.

3.07 Election of Method of Distribution. Each Participant may elect, prior to the earliest distribution date provided under this Plan, distribution of his or her benefits as provided herein at Article VII. Notwithstanding the foregoing, once a Participant has Severed from Employment, no benefits shall be deferred beyond the Required Distribution Date. Final determination regarding the method and manner of all distributions from the Plan shall, at all times, be at the discretion of the Plan Administrator.

3.08 Effect of Execution of Participation Agreement. Each Participant shall be deemed to have agreed to all terms and conditions of this Plan upon execution of a Participation Agreement. No Participant or Beneficiary shall have the power, ability, or right to sell, transfer, assign, hypothecate, or otherwise dispose of all, any part, or interest in the Participant's Participation Account, or any other right, interest(s) which the Participant or Beneficiary may have under the Plan, except as provided herein at Article IX.

3.09 Effect of Community Property Laws on Participant's Interest in the Plan. To the extent required under a final judgment, decree, or order made pursuant to a state domestic relations law, hereinafter referred to as a Qualified Domestic Relations Order (QDRO) in accordance with Code §414(p)(11), which is duly filed with the Plan Administrator, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, or a child of the Participant (hereinafter "Alternate Payee"). Where necessary to carry out the terms of a QDRO, a separate account may be established with respect to the Alternate Payee, and such person shall be entitled to make investment selections in the same manner as the Participant. All costs and charges incurred in administering the Alternate Payee's account(s) shall be deducted from the account(s). If the alternate payee is the former spouse, they may take immediate payout (even if the Employee/Participant is still employed) and the former spouse will be taxed on the amount received. He or she may rollover the distribution as provided in Section 6.01. Any amounts set aside for an Alternate Payee shall be paid out under one of the options described by Article VII herein; provided that: (a) the Alternate Payee has no greater rights in the Plan than the Participant; (b) the Alternate Payee may receive payment of any benefits hereunder prior to the date on which the Participant is eligible to receive distribution under Article VII herein; (c) the amount paid shall not exceed the balance of the Participant's Account; and (d) the amount of Deferred Compensation credited to the Participant's Account is reduced accordingly. If the Participant's interest is distributed to the Participant in any manner at the time the Alternate Payee is awarded an interest, then the Plan Administrator shall pay such interest awarded to the Alternate Payee at the same time the Participant is entitled to receive his or her benefits. Nothing in this Section shall be construed to authorize any amounts to be distributed at a time or in a form that is not permitted under Code §457.

3.10 Terminal Pay Deferral. For the purposes of this Section, "Terminal Pay" shall include salary and/or Compensation for unused vacation or sick leave. Nothing in this Section shall be deemed to authorize deferral of aggregate Compensation in any amount greater than permitted hereunder at Article IV. Notwithstanding any contrary provision in this Article III, a Participant may elect to amend the Participant's Participation Agreement to authorize the amount of Deferred Compensation to include all or part of his or her Terminal Pay, in addition to any other Compensation authorized to be deferred under his or her Participation Agreement and this Plan, or to exclude from deferral all or any part of the Participant's Terminal Pay previously included. Participants who retire or otherwise sever from County service during the month, may elect to defer any unused vacation, sick leave and/or back pay after the beginning of the month provided that the vacation, sick leave and/or back pay would otherwise have been payable before the Employee severed from service and the election was made before the date on which the vacation, sick and/or back pay would otherwise have been payable. Application of this Section 3.10 shall be subject to the County payroll system's processing limitation.

3.11 Leaves of Absence.

(a) Paid Leaves of Absence. If a Participant is on an approved leave of absence from the Employer with Compensation, or on an approved leave of absence without Compensation that does not constitute a Severance from Employment, which under the Employer's current practices is generally a leave of absence without Compensation for a period of one year or less, said Participant's participation in the Plan may continue.

(b) Unpaid Leaves of Absence. If a Participant is on an approved leave of absence without Compensation and such leave of absence continues to such an extent that it becomes a Severance from Employment, said Participant shall have Separated from Employment with the Employer for purposes of this Plan. Upon termination of leave without pay and return to active status, the Participant may enter into a new Participation Agreement to be effective when permitted by Section 4.01.

## ARTICLE IV

### **Limitation of Deferral of Compensation**

4.01 Regular Years. During each Employment Period in which an Eligible Employee is a Participant, the Employer shall defer payment of the Participant's Compensation as specified in the Participant's Participation Agreement provided that, except as provided herein at Sections 4.02 and 4.03, the total of all Deferred Compensation on behalf of a Participant for any taxable year may not exceed the lesser of:

(a) Applicable dollar amount in accordance with Code §457(e)(15) providing for contribution limits, or

(b) 100% of the Participant's Includible Compensation limit.

The total of each Participant's Deferred Compensation for a taxable year does not include any rollover amounts received by the Plan under Treasury Reg. §1.457-10(e). The limits of this Section shall be reduced by any amounts

excluded from gross income under a Code §457 plan operated by another employer for the taxable year. To the extent necessary to satisfy the dollar limitations of this Article IV, elective deferrals under this Plan will be restricted by the Plan Administrator.

#### 4.02 Years Immediately Preceding Retirement.

(a) Special §457 Catch-Up. If the application year is one of the Participant's last three (3) taxable years ending before the year in which the participant attains Normal Retirement Age, the Deferred Compensation limit for any taxable year may not exceed the lesser of:

1. Twice the applicable limit set forth in Section 4.01(a) herein, or
2. The sum of the dollar limitations provided herein at Section 4.01, plus the sum of the differences for all prior taxable years between the dollar limitations provided herein at Section 4.01 applicable to such prior taxable year and the amount of Compensation for such prior taxable year actually deferred. A prior taxable year shall be taken into account under this subsection only if (a) such taxable year begins after December 31, 1978; (b) the Participant was eligible to participate in the Plan during all or any portion of such taxable year; and (c) the Compensation deferred during the taxable year was subject to the dollar limitations provided at Section 4.01 herein. For purposes of this subsection, a Participant will be considered eligible to participate in the Plan for a taxable year if the Participant performs service for the Employer, as an Employee.

(b) Restriction on Special §457 Catch-Up. No Participant may elect a Normal Retirement Age in accordance with Section 2.18 more than once.

(c) Reduction in Catch-Up Limit. The Special §457 Catch-Up shall be reduced by any amounts excluded from gross income under a Code §457 plan operated by another employer for the taxable year.

(d) Catch-Up Over Age 50. At the age of 50 or over, a Participant may make an additional contribution in the Plan. The applicable dollar amount will be in accordance with Code §414(v), contribution limits. This additional Catch-Up cannot be used during the three years before retirement if the Special §457 Catch-Up is being used.

(e) Plan Participants may take advantage of both Catch-Up provisions, but not at the same time – i.e., if the Special §457 Catch-Up provision allows a Participant to defer more than the Age 50 Catch-up, the Age 50 Catch-Up provision will not be available to the Participant for that year.

4.03 Participants in More than One Deferred Compensation Plan. It is the sole responsibility of each Participant who participates in more than one cash or deferred arrangement, whether or not maintained by the Employer, to allocate the "dollar limitations" amount cash or deferred arrangements. If the dollar limitations set forth herein at either Section 4.01 or Section 4.02, herein are exceeded, the Participant must include the excess in the Participant's gross income for the tax year(s) for which the applicable limit is exceeded.

#### 4.04 Excess Deferrals.

(a) Employer level excess deferrals. Any Deferred Compensation for the taxable year of a Participant that exceeds the maximum deferral limitation set



forth in Section 4.02 and 4.03 with respect to the Employer's eligible plan(s), constitutes an excess deferral. The Plan Administrator shall maintain the eligible status of the plan(s) pursuant to the final regulations issued under Code §457, as amended from time to time, by distributing any excess deferral to the Participant, with allocable net income, as soon as administratively practicable after the Plan determines that the amount is an excess deferral. All eligible §457 plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan.

(b) Individual excess deferrals. Any amount that exceeds the individual limitation under §1.457-5 constitutes an excess deferral that is taxable in accordance with §1.457-11 for that taxable year. An individual level excess deferral could occur if the Participant participates in this Plan as well as one or more eligible plans with another employer. The Employer or Plan Administrator may distribute an excess deferral that is the result of the Participant's failure to comply with the individual limitation.

(c) Taxation of excess deferrals. All excess deferrals are includible in the Participant's gross income in the taxable year deferred. Earnings allocable to excess deferrals are includible in the Participant's gross income in the taxable year distributed.

(d) Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Code §414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

## ARTICLE V

### **Administration of the Plan**

5.01 Designation of Advisory Committee. The Plan shall be administered by the County Treasurer-Tax Collector with consultation from an Advisory Committee consisting of the County Treasurer-Tax Collector, County Auditor-Controller-County Clerk and County Administrative Officer, or their designees. The County Treasurer-Tax Collector, in consultation with the Advisory Committee, shall have authority to adopt rules and regulations for the administration of the Plan and to interpret any rules and regulations adopted. Any action of the Advisory Committee shall be deemed action of the Employer and shall be deemed taken in accordance with the original action granting authority to the Advisory Committee to act in behalf of the Employer.

5.02 Participant Appeal Process. If any Participant, Beneficiary or applicant for participation in the Plan is dissatisfied with any action of the Administrator or Advisory Committee of the Plan (excluding the determination whether a financial hardship constitutes an Unforeseeable Emergency if the

Deferred Compensation Plan Advisory Committee has designated that determination to a third party), such person may appeal to the Board of Supervisors within thirty (30) days after written notice is given to such person of the Administrator's action, by filing written notice of such appeal with the Clerk of the Board. The Board of Supervisors shall hear such appeal within thirty (30) days after the filing of same. The Clerk of the Board shall cause notice to be given of such hearing to the appellant and the Administrator of the Plan, at least ten (10) days prior thereto by personal delivery or by mailing same (which, in the case of appellant, may be mailed to the address shown in the notice of appeal, or if none, to the last known address of appellant). The decision of the Board in any such matter shall be final. With respect to Unforeseeable Emergency review, if the Deferred Compensation Plan Advisory Committee has designated the review of Unforeseeable Emergency requests to a third party, then the appeal of the decision of the third party will be with the Deferred Compensation Plan Advisory Committee. The decision of the Deferred Compensation Plan Advisory Committee in any such matter will be final

5.03 Administrator's Duties. The Administrator shall enforce this Plan in accordance with its terms and shall be charged with its general administration. The Administrator shall exercise all of his or her discretion in a uniform manner and shall have all necessary power to accomplish those purposes, including but not limited to the powers:

- (a) To determine all questions relating to the eligibility of Employees to participate;
- (b) To compute and certify the amount and kind of benefits payable to Participants and their Beneficiaries;
- (c) To maintain all data, records, documents and papers pertaining to the administration of the Plan;
- (d) To authorize all disbursements;
- (e) To direct investments in a manner consistent with the investment authorized by this Plan, including without limitation, Section 5.07 here; and
- (f) To recommend rules for the regulation of the Plan consistent with the terms hereof.

5.04 Advice, Consultation and Delegation of Authority. The Plan Administrator may employ or contract with any one or more persons or organizations to render consultation and/or advice and/or to perform services with regard to responsibilities of the Advisory Committee under the Plan. Any consultant must be approved by the Advisory Committee and, if required by County contracting and procurement rules, the Board of Supervisors. The consultant shall be governed by the Plan Administrator.

5.05 Deferred Compensation Fund. The County shall establish a Deferred Compensation Fund to which all Deferred Compensation shall be credited at such times as the Compensation would have been payable to individual Employees if such Employees were not Participants in the Plan. Separate Participant Accounts will be established for each Participant which shall show all amounts of Deferred Compensation, investments made, shares acquired, earnings, expenses, gains and/or losses on investments. Each Participant

Account will be valued at least quarterly.

5.06 Disclaimer. The Plan, any Participation Agreement and any Participant Account shall be deemed to create a trust or custodial account on behalf of, or for the benefit of any Participant or Beneficiary(ies). The Plan Administrator shall have only an unsecured contractual obligation to pay the benefits due the Participant under the Plan.

5.07 Investments of Deferred Compensation Funds. Upon execution of the Participation Agreement, the Employee shall designate his investment objective prospectively only. The Plan Administrator may, from time to time, invest and reinvest amounts of the Deferred Compensation in one or more types of investments authorized by §53609 of the California Government Code. The Employee's investment designations are intended to be an expression of mere investment preferences and do not obligate the Plan Administrator to follow the Employee's designations.

5.08 Eligible Investment Objectives. The Plan Administrator is required to invest Deferred Compensation bi-weekly in available investment vehicles. All amounts of Deferred Compensation, whether or not invested by the Plan Administrator, shall at all times be and remain as assets of the Participant. Any and all dividends, capital gains, distributions, interest or other income payable on any of the Participant's investments of Deferred Compensation also shall be an asset of the Participant. The Plan Administrator shall have the sole right to vote any shares of stock which it may acquire by such investment.

5.09 Cost of Administration. The Plan Administrator shall determine a fair and equitable charge to Participants for the County's expenses incurred in administering and/or implementing this Plan. The Employer shall withhold or collect by direct charge to the Participant Accounts the sum necessary to pay for the actual administration of the Plan.

5.10 Amendment and Termination of the Plan. The Employer may, at any time and from time to time, modify, amend or terminate the Plan in whole or in part or cease deferring Compensation pursuant to the Plan, by delivering to each Participant a written copy of such modification, amendment, or termination or of a notice that it ceased deferring Compensation. In the event of the termination of the Plan by the Plan Administrator under this Section, the value of all Participant's accounts shall be distributed to the Participants or their designated Beneficiary(ies) pursuant to the provisions of Article VII hereof. For purposes of this Section 5.10, "value" means the fair market value on the date of termination.

5.11 Trust or Custodial Provisions. The Employer shall establish a trust or custodial account (book entry account) for the exclusive benefit of Eligible Employees and their Beneficiaries in accordance with Code §457(g); no part of the corpus or income of the trust or custodial account shall revert to the Employer to be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries to include Section 5.09 herein. Such a trust or custodial account shall be established on or before December 31, 1998. Notwithstanding any contrary provisions of the Plan, in accordance with §457(g) of the Internal Revenue Code, all amounts of Compensation are deferred pursuant to the Plan. All property and rights purchased with such amounts and all

income attributable to such amounts, property or rights shall be held in one or more custodial accounts for the exclusive benefit of the Participant and Beneficiaries under the Plan. For the purpose of this paragraph, the custodian of any custodial account created pursuant to the Plan must be a bank, as described in Code §408(n) or a person who meets the non-bank trustee requirements of paragraphs (2)-(6) of §1.408-2(e) of the Income Tax Regulations relating to the use of non-bank trustees. All amounts of Compensation deferred under the Plan shall be transferred to a trust or custodial account described in Code §401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of Participants. To comply with this requirement, all amounts of Compensation deferred under the Plan shall be transferred to a trust or custodial account described in Code §401(f) not later than 15 business days after the end of the month in which the Compensation would otherwise have been paid to the Employee.

## ARTICLE VI

### **Plan-To-Plan Transfers and Rollovers**

6.01 (a) Transfer to Another Plan Eligible Under Code §401(a) and §457. Subject to the approval of the Plan Administrator, all or a portion of the balance in a Participant's Account may be transferred directly to another eligible plan under Code §401(a) and §457 providing that all of the following conditions are met:

- 1) The Participant has Severed from Service with the Employer, except the Participant may purchase, before Severance, permissible service credit of Kern County Employees' Retirement System or other qualified public employee retirement system in California (as defined in §415(n)(3)(A) in accordance with Code §457(e)(17). The transfer must be accomplished by a direct trustee-to-trustee transfer; and
- 2) The former Participant has become a participant in the receiving plan; and
- 3) The Participant makes an irrevocable written election to make a plan-to-plan transfer of all or a portion of his or her Participant Account balance; or plan-to-plan transfer before severance in an amount for the purchase of permissible service credit of Kern County Employees' Retirement System or other qualified public employee retirement system in California (as defined in §415(n)(3)(A)) in accordance with Code §457(e)(17); and
- 4) The receiving plan provides for the acceptance of plan-to-plan transfers; and
- 5) Payout will not commence upon Severance from Service regardless of any other provision in this Plan and amounts previously deferred will automatically be transferred.
- 6) In cases where a Participant has active accounts in both the Plan and County's Deferred Compensation Plan – Part-time, Seasonal, Temporary (the "PTST Plan"), the Plan Administrator reserves the right to automatically rollover the PTST Plan account funds into the Plan when the following conditions exist:
  - a) The Participant has severed from employment as an eligible PTST Plan Participant, and

b) It has been at least six (6) months from the date of severance from employment or the Participant has become a permanent County employee.

7) In the event of the Participant's death, the Plan Administrator may permit a Beneficiary(ies) to elect to have all or any portion of their Account balance transferred to another eligible plan.

(b) Rollover to Another Plan Eligible Under Code §401(a), § 401(k), §403(b), §457, and IRA's. Subject to the approval of the Plan Administrator, all or a portion of the balance in a Participant's Account may be transferred directly to another eligible plan under Code section §401(a), §401(k), §403(b), §457, and IRA's providing that all of the following conditions are met:

- 1) The Participant has Severed from Service with the Employer; and
- 2) The former participant has become a participant in the receiving plan; and
- 3) The Participant makes an irrevocable written election to make a rollover of all or a portion of his or her Participant Account balance; and
- 4) The receiving plan provides for the acceptance of rollovers; and
- 5) Payout will not continue after election to rollover, regardless of any other provision in this Plan, and amounts previously deferred will automatically be transferred.

6.02.(a) Transfer from Another Plan Eligible Code §401(a), §401(k), §403(b), §457 and IRA's. Subject to the approval of the Plan Administrator, this Plan may accept the direct plan-to-plan transfer of assets (cash or its equivalent) from another eligible plan established under Code §401(a), §401(k), §403(b), §457 and IRA's, providing that all of the following conditions are met:

- 1) The Employee is eligible to participate in the Plan; and
- 2) The Employee is a Participant in the Plan and has made an irrevocable written election to make a plan-to-plan transfer of all or a portion of his or her account balance in the transferring plan to the Plan; and
- 3) The transferring plan document provides for plan-to-plan transfers; and
- 4) The plan administrator for the transferring plan gives written authorization for the transfer to the plan.

6.02.(b) Rollover from Another Plan Eligible Code §401(a), §401(k), §403(b), §457 and IRA's. Subject to the approval of the Plan Administrator, this Plan may accept the direct rollover of assets (cash or its equivalent) from another eligible plan established under Code §401(a), §401(k), §403(b), §457 and IRA's, providing that all of the following conditions are met:

- 1) The Employee is eligible to participate in the Plan; and
- 2) The transferring plan document provides for plan-to-plan transfers; and
- 3) The plan administrator for the transferring plan gives written authorization for the transfer to the Plan.

Notwithstanding the foregoing, the Plan Administrator may require in his or her sole discretion that some of all such interest be transferred in cash or its equivalent. Such amounts shall be held, accounted for, administered and otherwise considered compensation deferred under the Plan in the taxable year of such transfer in determining the maximum deferral under section 4.01 herein.

Nothing in this section shall be construed to authorize any amount to be transferred at a time or in a form that is not permitted under Code §457.

## ARTICLE VII

### Distribution of Benefits

#### 7.01 Distribution – General.

(a) Notwithstanding any other provision(s) of the Plan, all Plan distributions shall satisfy the requirements of this Section.

(b) For mandatory distributions, if any, made on or after the effective date of and subject to final Treasury regulations under Code §401(a)(31), payment of an account balance that exceeds \$1,000 but is less than \$5,000 (or other applicable limit under the Code) and for which the Participant has not made an election to receive in cash or to rollover to a qualified retirement plan shall, to the extent required by and in accordance with such regulations, be rolled over to an account set up for the benefit of the Participant with the IRA provider designated from time to time by the Plan Administrator.

(c) The terms of this Article shall be construed in accordance with all applicable Code sections.

7.02 Election of Distribution. The Participant may elect the distribution method described in Section 7.03 herein below at any time after Severance from Employment. The Participant may elect any distribution date, but not later than April 1 of the calendar year following the calendar year the Participant attains 70 ½, the Required Distribution Date.

7.03 Distribution Options. Prior to or after the commencement of distribution described in Section 7.02 and 7.04 herein, the Participant (or Beneficiary, as the case may be) may elect the following distribution options, subject to the Plan Administrator's discretion:

(a) Lump Sum Distribution. The total balance payable in one cash payment and may be subject to certain withholding tax;

(b) Partial Lump Sum Distributions. The payments represent a significant portion of the account balance and may be elected along with payments as described in item (c) of this Section. Partial lump sum distributions may be limited in number annually or lesser periods of time to minimize Plan administrative costs and may be subject to certain withholding tax;

(c) Payments for a Specified Period – Participant as Recipient. Annual, semiannual, quarterly or monthly payments to Participant over the Participant's life (or a term not to exceed the life expectancy of the Participant). In the event of the death of the Participant before the end of the selected term, the payments may continue to the designated Beneficiary for a period not exceeding the lesser of: (1) the life of the Beneficiary if the Beneficiary is the Participant's spouse or (2) shorter periods selected by the Beneficiary from available options.

(d) Payments for a Specified Period – Participant and/or Participant's Surviving Spouse as Recipients. Annual, semi-annual, quarterly or monthly payments for the lives of the Participant and the Participant's surviving spouse (or over a term which does not exceed the joint life and last survivor expectancy of the Participant and the Participant's spouse). In the event of the death of

the Participant or the Participant's surviving spouse before the end of the selected term, the payments may continue to the Beneficiary for a period not exceeding the amount of years remaining under the selected term.

(e) A Participant who is an eligible retired public safety officer, as defined under Code section 402(1)(4)(B), may elect to have distributions made directly to an insurer to pay qualified health insurance premiums for coverage for the eligible retired public safety officer, his/her spouse and dependents, by an accident of health insurance plan or qualified long-term care insurance contract as defined in Code section 7703B(b).

7.04 De Minimis Distributions Prior to Severance From Employment. Prior to Severance from Employment, the Participant may elect to receive or the Plan Administrator may distribute, without the consent of the Participant, the Participant's entire account if all of the following conditions are met:

- (a) The value of a Participant's Account does not exceed \$5,000;
- (b) No amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the distribution; and
- (c) There has been no prior distribution under the Plan to the Participant pursuant to this Section.

#### 7.05 Designating a Beneficiary.

(a) Each Participant must designate in the Participation Agreement or in any other manner authorized by the Plan Administrator, one or more Beneficiaries to receive any amounts that may be distributed in the event of death of the Participant prior to the complete distribution of benefits. A Participant may change the designated Beneficiary(ies) at any time by filing such change with the Plan Administrator in a manner approved by the Plan Administrator. If no such designation is in effect on the Participant's death, or if the designated Beneficiary(ies) disclaim(s) any portion of the benefit or does not survive the Participant by 30 days, the Beneficiary shall be the Participant's surviving spouse, if any, and then the Participant's estate.

(b) If the Participant's Beneficiary is the Participant's estate, or if the Participant's estate becomes the Beneficiary because no designation was in effect at the time of the Participant's death, an executor or administrator for the estate must be appointed within six (6) months of the Participant's death. If but no executor or administrator is appointed within six (6) months after Participant's death, the Plan Administrator shall direct the entire Participant's Account balance to be paid in one lump-sum to the Beneficiary or Beneficiaries designated in his last Will, or if there is no Will, then to the heirs at law of the Participant. Such Beneficiaries identified in this subsection 7.05(b) shall not be treated as designated beneficiaries for any other purpose of Article VII, hereof.

(c) If a trust is designated as the Beneficiary, then the Participant must deliver to the Plan Administrator an unqualified opinion from the Participant's attorney licensed to practice law in the State of California that the trust meets the distribution requirements set forth in Code §401(a)(9) and the regulations promulgated thereunder. If any other entity is designated as the Beneficiary, the Participant shall be treated as not having made a designation, in such case all amounts shall be distributed to the Participant's estate.

(d) If the Participant has designated a Beneficiary(ies) before marriage and not changed the Beneficiary(ies) designation after marriage, then the Plan Administrator shall direct any distribution in accordance with the designation on file.

**7.06 Death of Participant Before Commencement of Distributions.** If the Participant has a designated Beneficiary, then the entire amount payable with respect to the Participant shall be distributed pursuant to the distribution options described at Section 7.03 herein. Notwithstanding the foregoing, such distribution shall be payable in a manner not less frequent than over a period not to exceed the life expectancy of the surviving spouse if such spouse is the designated Beneficiary.

If the designated Beneficiary is an individual other than the Participant's surviving spouse, the distributions must commence on or before December 31 of the calendar year immediately following the calendar year in which the Participant died. If the designated Beneficiary is the Participant's surviving spouse, distributions must commence on or before the later of: (a) December 31 of the calendar year immediately following the calendar year in which the Participant dies, or (b) December 31 of the calendar year in which the Participant would have attained age 70 ½.

If the Participant's surviving spouse is the Participant's designated Beneficiary and the spouse dies after the Participant and there is no other designated Beneficiary, but distributions to the surviving spouse have not begun, the entire interest must be distributed in accordance with one of the methods described in Code 401(a)(9)(B)(ii) or (iii) and (iv).

**7.07** In the event of an Alternate Payee's death prior to receiving the full amount of benefits assigned under the QDRO and under the benefit option chosen by the Alternate Payee, such Alternate Payee's beneficiary(ies) shall receive the remainder of any unpaid benefits under the terms of the QDRO. If no beneficiary has been designated by the Alternate Payee, then the remainder of any unpaid benefits shall be distributed in accordance with Section 7.05(a) herein. The original Participant will be considered the surviving spouse.

**7.08 Required Distribution.** Notwithstanding anything to the contrary herein, benefits shall be distributed upon a Participant's reaching the Required Distribution Date.

**7.09 Commencement of Benefit Distribution.** Except as otherwise provided herein, all payments of benefits will commence in the month designated by the Participant or designated Beneficiary pursuant to the options described herein.

**7.10 Continued Investment of Participant Account.** Except as otherwise provided herein a Participant's Account may continue to be invested until, in the Plan Administrator's sole discretion, cash is to be withdrawn for payment of benefits.

**7.11 Distribution – Unforeseeable Emergency.** If the Deferred Compensation Plan Advisory Committee or their designee has determined that a Participant has incurred a genuine financial hardship due to an Unforeseeable Emergency and that no other resources of financial relief are available, the Deferred Compensation Plan Advisory Committee or their designee may grant, in



its sole discretion, a Participant's request for a payment from the Participant's §457 Deferred Compensation account. Any payment made under this provision shall be in an amount reasonably necessary to satisfy the emergency need, less taxes.

(a) The Deferred Compensation Plan Advisory Committee or their designee shall have the right to request and review all pertinent information necessary to assure that Unforeseeable Emergency withdrawal requests are consistent with the provisions of Code §457.

(b) In no event, however, shall an Unforeseeable Emergency distribution be made if such hardship may be relieved:

(1) Through reimbursement or compensation by insurance or otherwise;

(2) by liquidation of the Participant's assets, to the extent the liquidation of the Participant's assets would not itself cause a severe financial hardship; or

(3) by cessation of deferrals under this Plan.

(c) The amount of an Unforeseeable Emergency withdrawal shall not exceed the lesser of:

(1) the amount reasonably necessary, as determined by the Plan Administrator, to satisfy the hardship; or

(2) the amount of the Participant's account.

7.12 Changes in Distributions. Notwithstanding any other provision of this Plan, the Plan Administrator may at any time change the time or method of distribution of benefits under the Plan. The Plan Administrator may, at his/her discretion, discharge in full its obligations under the Plan to any Participant or Beneficiary(ies) or, following the death of the Participant, distribute an amount equal to the balance of the Participant's Account to the Participant's Beneficiary(ies).

7.13 Revocability of Distribution Elections. With respect to elections to receive distributions due to the Participant's Severance from Employment, any election to commence distribution will become void if the Participant becomes re-employed with the County and qualifies as an Eligible Employee.

7.14 Withholding of Taxes. Except as otherwise allowed by law and notwithstanding any other provision in this Plan, upon distribution of benefits to the Participant and/or designated Beneficiary, the Employer shall cause to be withheld all applicable federal and State income taxes and any other amounts required by law.

7.15 Satisfaction of Payment. Any distribution to a Participant or to his or her legal representative or Beneficiary(ies), in accordance with the provisions of the Plan, shall, to the extent of such distribution only, be in full satisfaction of all claims hereunder against the Plan Administrator, the Advisory Committee and the Employer, any of whom may require such Participant, legal representative or Beneficiary(ies), as a condition precedent to such payment, to execute a receipt and release therefore in such form as shall be determined by the Plan Administrator, the Advisory Committee or the Employer, as applicable. The

Employer does not guarantee the Plan, the Participants, former Participants or their designated Beneficiary(ies) against loss of or depreciation in value of any right or benefit that any of them may acquire under the terms of the Plan. Further, the Employer does not warrant any tax benefits of the Plan.

7.16 Procedure When Distributee Cannot Be Located. The Administrator shall make all reasonable attempts to determine the identity and address of a participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means:

- (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or Administrator's records,
- (b) notification sent to the Social Security Administration, Internal Revenue Service or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans) and
- (c) the payee has not responded within six months.

If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the trust fund shall continue to hold the benefits due such person until in the Employer's or Administrator's sole discretion, the Plan is required to take other action under applicable law except that if, in the Adoption Agreement, the Plan elected mandatory distributions greater than \$1,000, then the Administrator will pay the distribution for such person in a direct rollover to an individual retirement plan designated by the plan administrator.

7.17 Cash Outs. If a Participant upon Severance from Employment does not elect to take a distribution in cash or direct his or her Account balance to another plan or an IRA, the Plan Administrator may cash out the Participant's Account. In such cases, small account balances (\$5,000 or less) not attributable to rollover contributions may be cashed out upon Severance from Employment without the employee's consent. The amounts cashed out for \$1,000 or more may be required to be sent to a designated IRA provider as a default option to receive the amount.

## ARTICLE VIII

### Loans

If so specified in the Participant Agreement, a Participant who is an Eligible Employee may apply for and receive a loan from his or her Account Balance as provided in this Article VIII and pursuant to a loan policy executed by the Plan Administrator. Any such loan may not be for an amount less than the minimum amount specified by the Administrator. If not specified by the Administrator, the minimum loan amount shall be \$1,000.

Except as modified by the loan policy adopted by the Plan Administrator from time to time, the following rules shall apply to loans under the Plan. Any loans that are issued under the Plan shall be administered in a manner consistent with the requirements contained in Code § 72(p), Treasury Regulation § 1.72(p)-1 and any other applicable guidance issued thereunder.

8.01 Maximum Loan Amount. No loan to a Participant hereunder may exceed the lesser of:

(a) \$50,000; or

(b) One-half of the value of the Participant's vested Account Balance.

For purposes of 8.01, the maximum loan amount shall be reduced by the highest aggregate loan balance during the past 12 months, minus the loan balance on the date a new loan is made. The participant is responsible for ensuring that the aggregated loan amount requested is the lesser of \$50,000 or 50% of the vested account balance.

8.02 Number of Loans Permitted. The Plan does not allow for multiple loans therefor the maximum number of loans a Participant may have outstanding is one (1). If a Participant has an outstanding loan and wishes to initiate another loan, the Participant must first repay the current outstanding loan.

8.03 Loan Provisions. The terms of the loan shall:

(a) Require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the borrower is on a bona fide unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of Code § 414(u) or for the duration of an interruption of employment which is due to qualified military service;

(b) Require that the loan be repaid within five years unless the Participant provides the Administrator with proof of the purchase of a residence; said proof must confirm that the loan is to be used to acquire any dwelling unit which shall become the principal residence of the Participant within a reasonable time from the date of the loan; and

8.04(c) Provide for a reasonable rate of interest to be fixed by the Administrator from time to time. The Administrator shall not discriminate among Participants in the matter of interest rates, but loans granted at different times may bear different interest rates based upon prevailing rates at the time. All interest shall be paid to the Participant. Security for Loan; Default.

(a) Security. Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest equal to the outstanding balance of the loan.

(b) Default. In the event that a Participant fails to make a loan payment under this Article VIII by the end of the calendar quarter following the calendar quarter in which such payment was due, a default on the loan shall occur. In the event of such default;

(1) All remaining payments on the loan shall be immediately due and payable;

(2) Interest will continue to accrue on the unpaid balance until the loan is repaid in full either directly by the Plan Participant or by application of the portion of the Participant's interest in the Plan held as security for the loan; and

(3) The Participant shall be permanently ineligible for any future loans from the Plan unless, in the Administrator's sole discretion, the Participant is deemed to be credit worthy and agrees to repay the loan through payroll deduction.

(4) All accrued but unpaid interest and the remaining principal, will be reported to the IRS as taxable income on a Form 1099-R for the year in which the loan default occurs.

In the case of any default on a loan to a Participant, the Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan. Upon Severance from Employment, the entire amount of the loan will become due and payable by the end of the calendar quarter following the calendar quarter in which severance of employment occurs or the loan will be deemed Defaulted under this section. However, a former Participant may elect to designate the unpaid loan as a "deemed distribution" and only Section 8.03(b)(4) will apply. In addition, the Administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the Account Balance of the Participant.

Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan (with the Beneficiary or Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

8.05 Hospital Authority. In the event that the Kern County Hospital Authority is created pursuant to AB 2546, and the Kern County Hospital Authority becomes an Employer as defined herein, and Eligible Employees of the Plan transfer to employment with the Kern County Hospital Authority, the transfer of those Eligible Employees will not constitute a Severance from Employment for purposes of requiring loan repayment in full or a loan default so long as the Eligible Employee loan repayments continue to be automatically deducted from the Eligible Employees pay warrant.

8.06 Repayment. The Participant shall be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing Employer to make payroll deductions from his or her Compensation so long as the Participant is an Eligible Employee and to transfer such payroll deduction amounts to the Trustee in payment of such loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed; provided, however, a

Participant may prepay the entire outstanding balance of his loan at any time; and provided, further, that if any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence or is no longer employed by the Employer, or the Participant's paycheck is insufficient for any other reason, the Participant shall pay directly to the Plan the full amount that would have been deducted from the Participant's paycheck, with such payment to be made by the last business day of the calendar month in which the amount would have been deducted. Loan repayments are, at the Employer's election, suspended for Qualified Military Service as permitted by Code § 414(u)(4).

## ARTICLE IX **Employer Participation**

9.01 Additional Contributions. Notwithstanding any other provisions of this Plan, the Employer may make additional deposits in the Deferred Compensation Fund as additional Compensation for Services to be rendered by the Employee to the Employer during an Employment Period; provided that: (a) the Employee has elected to have such additional Compensation deferred, invested and distributed pursuant to this Plan prior to the Employment Period in which the Compensation will be earned, and (b) such additional deposits shall not exceed the maximum deferral permitted in Article IV herein.

9.02 Matching Contributions. The County will make a matching contribution to the Plan on behalf of the individuals described in Appendix A. The matching contribution for each Employment Period on behalf of a Participant will equal 100% of the Participant's salary deferral under the Plan for such period, but shall not exceed 6% of the Participant's compensation for the same bi-weekly period. Compensation for purposes of this Section 9.02 means the Participant's current hourly rate of pay multiplied by all hours paid to the Participant in the applicable Employment Period, excluding any paid overtime hours.

Once deposited, matching contributions shall become 100% vested and shall be treated in the same manner as elective salary deferrals for all purposes under the Plan. Notwithstanding the foregoing, the County will not contribute a matching contribution on behalf of any individual to the extent such matching contribution will cause the individual's Deferred Compensation to exceed the applicable dollar limitations of Article IV.

The County may, at any time and without limitation, terminate or reduce any matching contributions made to the Deferred Compensation Fund or the Plan, except to the extent such matching contribution is required under the terms of a collective bargaining agreement. No person will have any "vested right" under California or federal law to have the County make any matching contributions to the Deferred Compensation Fund or the Plan.

## ARTICLE X **Non-Assignability**

10.01 Non-Assignability. Benefits provided under the Plan may not be anticipated, assigned (either at law or in equity), alienated or made subject to attachment, garnishment, levy, execution or other legal or equitable process, except as provided in this Article IX.

10.02 "Assignment" and "Alienation." For purposes of this Article IX herein, the terms "assignment" and "alienation" include:

- (a) Any arrangement providing for the payment by the Employer of benefits which would otherwise be due to a Participant under the Plan, and
- (b) Any direct or indirect arrangement (whether revocable or irrevocable) whereby a third-party acquires from a Participant or Beneficiary(ies) a right or interest(s) enforceable against the Plan in, or to, all or any part of a Plan benefit payment which is, or may become, payable to the Participant or Beneficiary(ies).

10.03 Other Arrangements. For the purposes of this Article IX, the terms "assignment" and "alienation" do not include the following arrangements:

- (a) Any arrangement for the withholding of federal, State or local tax on Plan benefit distributions or other tax withholding as required by law;
- (b) Any arrangement for the recovery by the Plan or overpayments of benefits previously made to a Participant;
- (c) Any arrangement for the direct deposit of benefit payments to an account in a bank, savings and loan association or credit union, provided such arrangement is not part of an arrangement constituting an alienation as defined in Section 10.01;

(d) An arrangement whereby a Participant or Beneficiary(ies) direct(s) the Plan to pay all or any portion of a Plan benefit payment to a third-party (including the Participant's Employer) provided that:

- (1) It is revocable at any time prior to the payment by the Participant or Beneficiary(ies), and
- (2) The third-party files a written acknowledgment with the Plan Administrator which states that the third party has no enforceable right in, or to, any Plan benefit payments or portion thereof (except to the extent of payments actually received pursuant to the terms of the arrangement).

For purposes of the subsection, a blanket written acknowledgment from all Participants and Beneficiary(ies) who are covered under the arrangement with the third-party is sufficient. The written acknowledgment must be filed with the Plan Administrator not later than ninety (90) days after the arrangement is entered into; and

(e) Pursuant to a Qualified Domestic Relations Order (QDRO) or other court order, as provided herein at Section 3.09.

(f) Payments to Minors and Incompetents. To the extent the Plan Administrator determines that the following procedure meets applicable state or local law, if a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary

and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

## ARTICLE XI

### **Employer's Liabilities**

11.01 Limitation on Employer and Committee. The Plan Administrator or the Advisory Committee may, but are not required to, invest funds pursuant to agreements between Participants or designated Beneficiaries and the Employer in accordance with the request made by each Participant or Beneficiary at the time of enrollment or change in enrollment, prospectively.

The Plan Administrator or the Advisory Committee shall retain the right to approve or disapprove such investment request. Any action by the Plan Administrator or the Advisory Committee in investing funds, or approving of any such investment of funds shall not be considered to be either an endorsement or guarantee of any investment, nor shall it be considered to be a test of the financial soundness or the suitability of any investment for the purpose of meeting future obligations as provided herein at Section 5.08. Without limiting the foregoing, neither Employer, the Advisory Committee, any Employer officer nor employee shall be liable to any Participant, Beneficiary(ies), heirs or to any other person for any losses resulting from any action by the Federal Government or any of its agencies, including the Franchise Tax Board, which results in the taxation of any of a Participant's Compensation which has been deferred under the terms of this Plan.

11.02 Indemnity. In addition to the limitations of Section 11.01 herein above, the Employer neither warrants nor represents the tax benefits and/or tax consequences of the Plan. To the extent permitted by law, the Plan shall indemnify, hold harmless and (upon request) defend the members of the Advisory Committee, the Plan Administrator and the Employer from and against any and all liabilities, costs and expenses incurred by such persons as a result of any good faith act or omission to act, in connection with the performance of such persons' duties, responsibilities and obligations under the Plan.

## ARTICLE XII

### **Adoption of Plan by Participating Employees**

12.01 Adoption of Plan by Eligible Employers. This Plan may be adopted by employers who qualify as an "eligible employer" pursuant to §457(e) of the Code and who also meet the following criteria:

- (a) The Adopting Employer shall be a participant in the Kern County Employees' Retirement Association;
- (b) The Adopting Employer shall authorize the Kern County Treasurer-Tax Collector either directly or through a contract administrator selected by the Kern County Treasurer-Tax Collector to be the Plan Administrator.
- (c) The Adopting Employer shall not have another deferred compensation plan; and
- (d) The Adopting Employer shall comply with all terms and conditions of the Employer's Plan, including the payment of any fees or costs.

In order to effectuate the administration of the Plan, the Adopting Employer shall be required to enter into an agreement with Kern County and the Kern County Treasurer-Tax Collector as Plan Administrator. Adopting Employers and their employees who participate in the Plan shall have no rights to choose other investment options or to select other terms or conditions of participation in such Plan.

12.02 Definitions and Terms of Plan for Adopting Employer: Whenever this Plan is adopted by an Adopting Employer, the definitions and terms herein shall be as follows:

(a) "Eligible Employee" shall mean all common-law Employees of the Adopting Employer who are participants in the Kern County Employees' Retirement Association.

Notwithstanding the foregoing, employees who are participants in the Adopting Employer's Deferred Compensation Plan Part-Time, Seasonal, Temporary Plan are not eligible to participate in this Plan.

(b) "Employee" means any person employed by the Adopting Employer whose income is subject to withholding of income tax by the Adopting Employer. The term "Employee" does not include independent contractors.

(c) "Employer" shall mean the Adopting Employer.

(d) "Plan" means the County of Kern Deferred Compensation Plan, as adopted by the Adopting Employer.

## ARTICLE XIII

### **Miscellaneous**

13.01 Status of Participants. Neither the establishment of the Plan, any modification thereof, nor the establishment of any benefits shall be construed as giving to any Participant, Beneficiary or other person any legal or equitable right against the Employer except as herein provided; and in no event shall the terms of employment of any Employee or Participant be modified or in any way affected hereby.

13.02 Express Condition Precedent to Participation in the Plan. It is an express condition precedent to participation in the Plan, and each Employee by participating herein expressly agrees thereto, that he or she shall look solely to the general assets of the Employer for payment of any benefit to which he or she is entitled under the Plan.

13.03 Governing Law. This Plan shall be construed, administered and enforced according to the laws of the State of California, the Code, and all other applicable federal laws, as amended from time to time.

13.04 Qualified Military Service. Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to qualified military service shall be provided in accordance with Code §414(u).

13.05 No Right of Future Employment. Nothing in the Plan shall be construed as conferring upon any Participant any right to continue employment with the Employer.



13.06 Gender. As used in the Plan the masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the other unless the context clearly indicates otherwise.

13.07 Persons Affected by Plan. The Plan shall be binding upon and shall inure to the benefit of the Employer, its successors and assigns, all Participants and Beneficiaries and their heirs and authorized representatives.

13.08 Communications. Except as otherwise expressly provided, any notice or other communication required or permitted under this Plan shall be in writing, and if directed to the Employer, shall be sent to the Treasurer-Tax Collector's Office and, if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at the last known address for such person as it appears in the Employer's records.

13.09 Waiver of Rights to Salary. Each Participant in the Plan shall be deemed to have waived any rights to periodic payments of salaries or wages with respect to any Deferred Compensation pursuant to the provisions of the County Salary Ordinance concerning periodic payment of salaries or wages to officers and Employees of the Employer.

13.10 Headings. Headings used in the Plan are inserted for convenience of reference only.

## COUNTY OF KERN CALIFORNIA DEFERRED COMPENSATION PLAN

### APPENDIX A

1. All Eligible Employees hired on or after October 27, 2007, who are collectively-bargained County employees and who are members of the Service Employees International Union, Local 521, Bargaining Units 1-6 (hereinafter "SEIU, Local 521"), as required by the governing Memorandum of Understanding or other signed, written agreement between the County and SEIU, Local 521.
2. All Eligible Employees hired on or after October 27, 2007, who are management, mid-management or confidential employees of the County, but excluding any manager or supervisor of any employee who is covered by a Memorandum of Understanding between the County and the Kern County Prosecutors Association.