

**COUNTY OF KERN
DEFERRED COMPENSATION PLAN
PART-TIME, SEASONAL, TEMPORARY**



THIS DEFERRED COMPENSATION PLAN – PART-TIME, SEASONAL, TEMPORARY, established and adopted by the County of Kern on June 25, 1991, for the sole benefit of its Eligible Employees, is hereby amended and restated by the Kern County Board of Supervisors on March 3, 2015.

**ARTICLE I
NAME AND PURPOSE**

1.01 Plan Name: COUNTY OF KERN DEFERRED COMPENSATION PLAN – PART-TIME, SEASONAL, TEMPORARY – (the “Plan”).

1.02 Purpose: To establish and operate a “retirement system” satisfying the requirements of § 3121(b)(7)(F) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”), § 31.3121(b)(7)-2 of the Income Tax Regulations promulgated thereunder, and corresponding provisions of the Social Security Act. This shall be accomplished by the use of a deferred compensation plan eligible under § 457(b) of the Code and Government Code § 53113, et seq.

**ARTICLE II
DEFINITIONS**

For the purposes 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, 2nd Floor, Bakersfield, California 93301-4639.

2.02 “Adopting Employer” means an eligible employer under § 457(e) of the Code and Article XI 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 County 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 12.04 or an alternate payee as described in §1.457-10(c).

2.05 “Code” means the Internal Revenue Code of 1986, as amended from time to time. Reference to a specific section of the Code shall include any section, any regulation(s) promulgated thereunder, and any future legislation amending, supplementing, or superseding such section(s) or regulation(s).

2.06 “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.

2.07 “Deferred Compensation” means that portion of an Employee’s Includible Compensation which the Employee has deferred pursuant to this Plan.

2.08 “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.

2.09 “Eligible Employee” means all common-law part-time, temporary and seasonal employees of the County of Kern who are not eligible to participate in either the Kern County Employees’ Retirement Association, the Kern County Pension Plan for Physician Employees or any other County “retirement” plan which satisfies the requirements of § 218 of the Federal Social Security Act, as amended from time to time.

2.10 “Eligible State Deferred Compensation Plan” means a plan described in the Code § 457(b) and Government Code § 53213, et seq.

2.11 “Employee” means any person employed by the Employer, any portion of whose income is subject to withholding of federal income tax. The term “Employee” does not include independent contractors.

2.12 “Employer” means the County of Kern, a political subdivision of the State of California or an Adopting Employer under Article XI.

2.13 “Employment” means employment of an Employee by the Employer.

2.14 “Employment Period” or “Pay Period” means the bi-weekly period established by the Employer during which an Eligible Employee performs services for Employer upon which Compensation is based.

2.15 “Enrollment Period” means the first day of employment for new Eligible Employees and July 1, 1991 for Eligible Employees employed by the County on or before July 1, 1991.

2.16 “Includible Compensation” means Compensation which (taking into account the provisions of Code Section 457) is currently includible in gross income for federal income tax purposes. Amounts of Compensation for this purpose shall be determined without regard to community property laws.

2.17 “Participant” means any Eligible Employee who has fulfilled the requirements of enrollment in the Plan.

2.18 "Participant Account" means the trust or custodial account for each Employee to which the Participant's Deferred Compensation, together with any interest, is credited exclusively for the benefit of the Participant or Beneficiary.

2.19 "Participation Arrangement" means the written agreement executed and filed by an Eligible Employee with the Employer pursuant to Section 301, under which such Eligible Employee becomes a Participant in the Plan.

2.20 "Plan" means this Kern County Deferred Compensation Plan – Part-Time, Seasonal, Temporary.

2.21 "Plan Year" means a calendar year.

2.22 "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 Separated from Employment. Participants who have attained the age of 70 ½ and continue to be employed by the Employer are permitted to continue deferral of their earned income while also receiving payments.

2.23 "Severance from Employment" means the Participant's retirement, permanent disability, resignation, discharge or termination from Service as provided in Regulation § 1.457-2(h)(2).

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

2.25 "Other Definitions" All other terms not defined in this Article II, as now in effect or hereinafter amended, shall be interpreted as defined by the Code, applicable federal and State statutes, and regulations, as amended from time to time.

ARTICLE III **PARTICIPATION**

3.01 Eligibility. Upon acceptance of employment with the Employer, all Eligible Employees are eligible to participate in the Plan and shall execute a Participation Arrangement, prior to the first day of such Employee's employment. Such Participation Arrangement shall provide for the deferral of 7.5% of Participant's Compensation.

3.02 Enrollment Period. After the execution of a Participation Arrangement, an Eligible Employee becomes a Participant in the Plan, effective immediately. (Notwithstanding the foregoing, Eligible Employees hired prior to July 1, 1991 became Participants in the Plan on the first payday in July 1991). All Participants shall continue to participate in the Plan during the full term of their employment as Eligible Employees with the Employer.

3.03 Amount of Deferral. The Employer shall defer 7.5% from each Participant's Compensation for all Plan Years in which they are Participants in the Plan. Notwithstanding the foregoing, the amount of such deferral shall not exceed an amount derived by multiplying 7.5% times the then-applicable Social Security Wage base.

3.04 Election of Method of Distribution. Each Participant may elect distribution of benefit options and payout options as provided in Article VII.

3.05 Consent to Terms and Conditions. Each Participant shall be deemed to have consented to all terms and conditions of the Plan upon execution of a Participation Arrangement.

3.06 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. Where necessary to carry out the terms of a QDRO, a separate account may be established with respect to the spouse, former spouse, or child, and such person shall be entitled to make investment selections in the same manner as the Participant. All costs and charges incurred in carrying out the investment selection shall be deducted from the account created for the spouse, former spouse, or child making the investment selection. The former spouse 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 a spouse, former spouse or a child shall be paid out under one of the options described by Article VII herein; provided that: (1) the spouse, former spouse or child has no greater rights in the Plan than the Participant; (b) the spouse, former spouse or child 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 spouse, former spouse or child is awarded an interest, then the Plan Administrator shall pay such interest awarded to the Participant's spouse, former spouse or child 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.

ARTICLE IV **LIMITATION** OF DEFERRAL OF COMPENSATION

4.01 Deferral Limit. During each Employment Period in which an Eligible Employee is a Participant in the Plan, the Employer shall defer payment of the Participant's Compensation in an amount equal to 7.5% of Compensation. Notwithstanding the foregoing, no Participant may defer under the Plan during a taxable year more than the lesser of:

- (a) A dollar limit adjusted in accordance with Code § 457(e)(15) providing for cost-of-living adjustments; or
- (b) 100% of the Participant's Includible Compensation limit; or
- (c) An amount equal to 7.5% multiplied by the base wage for Social Security in effect during the year of contribution.

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, alter, amend or revise any rules and regulations adopted.

Any action of the Advisory Committee shall be deemed action of the Employer and shall be deemed to be 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, such person may appeal to the Board of Supervisors within thirty (30) days after written notice is given to such person of the Plan 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 the 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.

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 from the Investment Fund;
- E. Subject to the limitations set forth in Section 5.07, to direct the investment to be made in a manner consistent with the investment authorized by this Plan; and
- F. To recommend such rules for the regulation of the Plan consistent with the terms hereof.

5.04 Advice, Consultation and Delegation of Authority. The Employer 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. Said consultant shall be selected by the Employer after consideration of recommendations by the Advisory Committee. The consultant shall be governed by the Advisory Committee.

5.05 Deferred Compensation Fund. The County shall establish a Deferred Compensation Fund entitled "Kern County Deferred Compensation – Part-Time, Seasonal, Temporary Fund" to which all deferred contributions shall be credited at such times as the Compensation would have been payable to individual Employees if not a Participant in the Plan. Separate Participant Accounts shall be established for each Employee participating which shall show the amount of Deferred Compensation contributed and interest earned by the Participant Account. Each Participant Account will be valued at least quarterly.

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

5.07 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 interest or other income payable on any of the Participant's investments of Deferred Compensation also shall be an asset of the Participant.

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

5.09 Amendment and Termination of the Plan. The Employer may, at any time and from time to time, modify 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 or amendment, or of a notice that it ceased deferring compensation.

In the event of the termination of the Plan by the Employer under this Section, the value of all Participants' 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 5.09, "value" means the fair market value on the date of termination.

5.10 Trust or Custodial Provisions. The Employer shall establish a trust or custodial account (book entry account) for the exclusive benefit of the Participants and their Beneficiary(ies) in accordance with Code Section 457(g); no part of the corpus or income of the trust or custodial account shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiary(ies) to include Section 5.09. 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 Section 457(g) of the Internal Revenue Code, all amounts of compensation 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) of the Internal Revenue Code, 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 to the Employee.

ARTICLE VI **PLAN-TO-PLAN TRANSFERS** AND ROLLOVERS

6.01 Transfer to Another Plan Eligible Under Code § 401(a) and § 457. Subject to the approval of the Plan Administrator, 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:

- (a) The Participant has Severed from Employment with the Employer, except the Participant may purchase, 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
- (b) The former Participant has become a participant in the receiving plan;
and
- (c) The Participant makes an irrevocable written election to make a plan-to-plan transfer of his or her entire 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). The transfer must be accomplished by a direct trustee-to-trustee transfer; and
- (d) The receiving plan provides for the acceptance of plan-to-plan transfers; and
- (e) Any distribution will not commence upon Severance from Employment, regardless of any other provision in this Plan, and amounts previously deferred will automatically be transferred.
- (f) In cases where a Participant has active accounts in both Plan 01 and Plan 02, the Plan Administrator reserves the right to automatically rollover the 02 account funds into the 01 Plan when the following conditions exist:

- The Participant has severed from employment as an 02 Participant, and
- It has been at least six (6) months from the date of severance from employment.

Transfers between eligible governmental plans and eligible plans maintained by tax-exempt entities are not permitted.

6.02 Rollovers to Plan.

The Plan shall accept a rollover contribution on behalf of a Participant. A rollover contribution for purposes of this Section is an eligible rollover contribution (as defined in Code §402(f)(2) and from any (i) plan qualified under Code §401(a) or 403(a); (ii) tax-sheltered annuity or custodial account described in Code §403(b); (iii) individual retirement account or annuity described in Code §408; or (iv) eligible deferred compensation plan described in Code §457(b) maintained by an Employer described in Code §457(e)(1)(A). Prior to accepting any rollover contribution, the Plan Administrator may require that the Participant establish that the amount to be rolled over to the Plan is a valid rollover within the meaning of the Code. A Participant's rollover contribution shall be held in a separate rollover account or accounts, as the Plan Administrator shall determine from time to time.

6.03 Eligible Rollover Distributions.

- (a) General. Notwithstanding any provision of this Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect at any time and in the manner prescribed by the Plan Administrator, to have the entire balance of an eligible rollover distribution paid.
- (b) Definitions. For purposes of this Section, the following definitions shall apply:
 - (1) Eligible Rollover Distribution means any distribution of all of the balance to the credit of the distributee.
 - (2) Eligible Retirement Plan means an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §403(a) that accepts the distributee's eligible rollover distribution, a qualified trust described in Code §401(a) (including §401(k)) that accepts the distributee's eligible rollover distribution, or another eligible deferred compensation plan described in Code §457(b) that accepts the distributee's eligible rollover distribution.
 - (3) Distributee. A Distributee includes an Employee or former Employee, the Employee's or former Employee's surviving spouse and the Employee or former Employee's spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Code §414(p), are distributes with regard to the interest of the spouse or former spouse.
 - (4) Direct Rollover. A Direct Rollover is a lump-sum payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

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 designed from time to time by the Employer.
- (c) The terms of this Article shall be construed in accordance with all applicable Code sections.

7.02 Commencement of Distribution After Severance From Employment. Upon the Participant's Severance from Employment and after a continuous period ending six (6) months following Severance, the Participant's Account may be distributed to the Participant in accordance with one (1) of the Distribution Options described herein. It is the intent of the Plan to provide for distribution after a continuous period ending six (6) months following Severance from Employment. If there is any likelihood of re-employment following a six (6) month Severance from Employment, the Plan Administrator reserves the right to withhold distribution. The Participant may elect any Distribution date, but not later than April 1 of the calendar year following the calendar year the Participant attains age 70 ½, the Required Distribution Date.

7.03 Distribution Options. Prior to the commencement of Distribution described in Sections 7.02 herein, the Participant (or Beneficiary(ies), as the case may be) may elect one of the following payout options, subject to the Plan Administrator's discretion:

- A. Lump-Sum Payment. The total balance payable in one (1) cash payment and may be subject to certain withholding tax;
- B. Partial Lump-Sum Payment. The first payment represents a large portion of the account balance followed by payments as described in subsection 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, semi-annual, 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 will continue to the Beneficiary(ies) for a period not exceeding the lesser of:
 - (1) the life of the Beneficiary if the Beneficiary is the Participant's spouse, or
 - (2) a shorter period 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 terms, the payments may continue to the Beneficiary for a period not exceeding the amount of years remaining under the selected term.

7.04 Death of Participant Before Commencement of Distributions. If the Participant has designated his/her Beneficiary(ies), then the entire amount payable with respect to the Participant shall be distributed pursuant to the Distribution Options described in 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 dies. If the designated Beneficiary is the Participant’s surviving spouse, Distributions must commence on or before the later of: (1) December 31 of the calendar year immediately following the calendar year in which the Participant dies, or (2) 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).

7.05 Commencement of Benefit Payout. Except as otherwise provided herein, all payments of benefits shall commence in the month designated by the Participant or designated Beneficiary(ies) pursuant to the options described herein.

7.06 Continued Investment of Participant Account. Except as 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.

7.07 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, Beneficiary(ies) 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).

7.08 Irrevocability of Distribution Elections. Any pending election regarding the method of Distribution may become void if the Participant becomes re-employed with the Employer.

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

7.10 Satisfaction of Payment. Any payment 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 payment 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.

7.11 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.

7.12 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 **EMPLOYER PARTICIPATION**

Notwithstanding any other provisions of this Plan, the Employer may make additional deposits to the Deferred Compensation Fund as additional Compensation for services to be rendered by the Employee to the Employer during an Employment Period; provided that such additional deposits shall not exceed the maximum deferral permitted in Section 4.01.

ARTICLE IX
NON-ASSIGNABILITY

9.01 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.

9.02 “Assignment” and “Alienation.” For purposes of this Section, the terms “assignment” and “alienation” include:

- A. Any arrangement providing for the payment to the Employer of benefits which would otherwise be due to a Participant under the Plan.
- 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).
- C. For the purposes of this Article IX, the terms “assignment” and “alienation” do not include the following arrangements:
 - 1. any arrangement for the withholding of federal, State or local tax of Plan benefit payments;
 - 2. any arrangement for the recovery by the Plan of overpayment of benefits previously made to a Participant;
 - 3. any arrangement for the direct deposit of benefit payments to the Participant’s and/or Beneficiary(ies) account in a bank, savings and loan association, or credit union, provided such arrangement is not part of an arrangement constituting an assignment or alienation as otherwise defined in this Section and barred by Section 9.01;
 - 4. an arrangement whereby a Participant, or Beneficiary(ies) directs the Plan to pay all, or any portion, of a Plan benefit payment to a third party (including Participant’s Employer) provided that:
 - a. it is revocable at any time by the Participant or Beneficiary(ies), and
 - b. 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 arrangement). For purposes of the subsection, a blanket written acknowledgment for 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.
- D. Pursuant to a Qualified Domestic Relations Order or other court order as provided herein.

ARTICLE X
EMPLOYER'S LIABILITIES

10.01 Limitation on Employer and Committee. The Plan Administrator or the Committee may, but are not required to, invest funds pursuant to agreements between Participants and the Employer in accordance with the request made by each Participant at the time of enrollment or change in enrollment, prospectively only. The Employer shall retain the right to approve or disapprove such investment request. Any action by the Employer in investing funds, or approving of any such investment of funds shall not be considered 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 in Section 5.07 herein. Without limiting the foregoing, neither the 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 Internal Revenue Service and the State of California or any of its agencies, including the Franchise Tax Board, which results in the taxation of any of Participant's Compensation which has been deferred under the terms of this Plan.

10.02 Indemnity. In addition to the limitations herein, 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 person's duties, responsibilities and obligations under the Plan.

ARTICLE XI
ADOPTION OF PLAN
BY PARTICIPATING EMPLOYERS

11.01 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 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;
- (b) The Adopting Employer shall not have another deferred compensation plan;
and
- (c) The Adopting Employer shall comply with all terms and conditions of the County'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.

11.02 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 part-time, temporary and seasonal Employees of the Adopting Employer who are not eligible to participate in either the Kern County Employees' Retirement Association or any other employer "retirement" plan which satisfies the requirements of Section 218 of the Federal Social Security Act, as amended from time to time.
- (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) "Enrollment Period" shall mean the first day of employment for new Eligible Employees and July 1, 1991 for Eligible Employees for whom the Adopting Employer is the successor employer to County employees who are Eligible Employees.
- (e) "Plan" means the County of Kern Deferred Compensation Plan Part-Time, Seasonal, Temporary as adopted by the Adopting Employer.

ARTICLE XII MISCELLANEOUS

12.01 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(ies) 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.

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

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

12.04 Designating a Beneficiary.

- (a) Each Participant must designate in the 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.

12.05 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).

12.06 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.

12.07 Gender. As used in this 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.

12.08 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 Beneficiary(ies), and their heirs and authorized representatives.

12.09 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(ies), shall be sent to such Participant or Beneficiary(ies) at the last known address for such person as it appears in the Employer's records.

12.10 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 period payment of salaries or wages to officers and Employees of the Employer.

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

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