



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

Adopted by the Board of Supervisors, December 21, 1999  
Amendment approved by the Board of Supervisors, September 25, 2000  
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Amendment approved by the Board of Supervisors, April 23, 2013

The San Bernardino County 401(a) Defined Contribution Plan became effective December 21, 1999 and constitutes a defined contribution, profit sharing plan (qualified under the applicable portions of Section 401(a) of the Internal Revenue Code) for the exclusive benefit of eligible employees and their beneficiaries.

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

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**THE SAN BERNARDINO COUNTY  
401(a) DEFINED CONTRIBUTION PLAN**

**ARTICLE I  
GENERAL**

1.01 Name

The name of this Plan shall be the San Bernardino County 401(a) Defined Contribution Plan.

1.02 Purpose

The primary purpose of this Plan is to permit Employees of the County and certain other persons as approved by the County of San Bernardino Board of Supervisors to enter into an agreement which will provide the deferral of a portion of their current Base Salary until retirement, termination of employment, death, or other event, in accordance with the provisions of Code section 401(a), with other applicable provisions of such Code, and in accordance with the statutes of the State of California.

It is intended that the Plan shall qualify as an eligible defined contribution plan within the meaning of Code section 401(a), sponsored by the County.

1.03 Disclaimer

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

**ARTICLE II  
DEFINITIONS**

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

2.01 Account

Account shall mean the separate accounts that the Plan Administrator shall maintain to record the interest of a Participant in the Plan. Such Accounts may include the Employer Contribution Account and the Employee Rollover Contribution Account.

2.02 Adjusted

Adjusted means adjusted to take into account any cost-of-living increase adjustments provided for the Plan Year under Code Section 415(d).

2.03 Anniversary Date

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

2.04 Annual Additions

The term Annual Additions means, for any Plan Year, the sum of: (1) all Contributions made on behalf of the Participant in accordance with Article V; (2) the forfeitures allocated to such Participant; (3) amounts credited to an individual medical account, as defined in Code section 415(l)(2), which is part of a defined benefit plan maintained by the Employer; and (4) amounts attributable to post-retirement medical benefits to a key employee, as required by Code section 419A(d)(2).

2.05 Base Salary

For Eligible Employees paid on an hourly basis, Base Salary for each Pay Period shall be equal to the number of hours regularly scheduled to work for that Pay Period times hourly rate of pay. An exception to this definition shall be made for hours paid for Short-Term Disability (STD). STD hours shall only be included in the computation of Base Salary for each Pay Period if the Participant has elected to fully integrate STD with paid leave and/or regular time for that Pay Period. Base Salary shall not include payment for overtime, or payments made through the County's Medical Emergency Leave or Workers' Compensation Programs. For Eligible Employees who are elected officials paid on a daily basis, Base Salary for each Pay Period is equal to the number of days paid during that Pay Period times daily rate of pay.

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

2.06 Beneficiary

Beneficiary means any person or organization designated by the Participant to receive an annuity, death benefit, or other benefit under the provisions of this Plan, by reason of such Participant's death provided that the sole primary Beneficiary of a married Participant shall be his or her surviving spouse unless the Participant has designated another Beneficiary with the written consent of such spouse. The designation may be made, and may be revoked and changed, only by a written instrument (in a form acceptable to the County) signed by the Participant, consented to by the Participant's spouse, if any, and filed with the Plan Record Keeper prior to the Participant's death.

2.07 Code

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



- 2.08 Contributions  
Contributions shall mean Employer Contributions. Contributions may also include Employee Rollover Contributions.
- 2.09 County  
The County shall mean the County of San Bernardino.
- 2.10 Defined Contribution Committee  
The Defined Contribution Committee shall mean the Committee appointed by the County in conformance with Article IV, Section 4.02.
- 2.11 Dependents  
Dependents shall include a Participant's spouse and such other individual whose relationship to the Participant is described in Code section 152.
- 2.12 Distributee  
Distributee means: (a) an Employee or former Employee, (b) the Employee's or former Employee's surviving spouse, or (c) the Employee's or former Employee's spouse or former spouse who is the alternate payee under a domestic relations order, as defined under Code section 414(p).
- 2.13 Effective Date  
The Effective Date shall mean January 1, 2000.
- 2.14 Eligible Employee  
Eligible Employee means an employee who is:
- (a) a County Elected Official serving on the Board of Supervisors, or
  - (b) a County Elected Official serving as a County Department Head, or
  - (c) a County contract employee, if the contract as approved by the Employer specifies that the employee is eligible, or
  - (d) a participant who contributes the required salary deferral to the 457(b) Deferred Compensation account and is eligible to receive a Matching Contribution from their Employer. or
  - (e) other categories of employees as specified by the Employer.
- 2.15 Eligible Retirement Plan  
Eligible Retirement Plan means any other 401(k) plan, a 401(a) plan, a 403(b) program, a 457(b) plan maintained by an employer which satisfies the definition of Code section 457(c)(1)(A) (a governmental 457(b) plan), an individual retirement account as described in Code section 408(a), and individual retirement annuity as described in Code section 408(b).

- 2.16 Eligible Rollover Distribution  
Eligible Rollover Distribution means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or the joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); or any amount that is distributed on account of an Hardship Withdrawal.
- 2.17 Employee  
Employee shall mean any person who is employed by the Employer, but excludes any person who is employed as an independent contractor.
- 2.18 Employee Rollover Contribution  
A Contribution that qualifies as an eligible rollover contribution from an Eligible Retirement Plan.
- 2.19 Employer  
Employer shall mean the County of San Bernardino and each other public agency listed in Appendix B that has adopted the Plan with the County Board of Supervisors' approval.
- 2.20 Employer Contribution  
An Employer Contribution made as a percentage of the Participant's Base Salary.
- 2.21 Employer Non-Elective Contribution  
An Employer Non-Elective Contribution that is made on a discretionary basis and allocated to a Participant who is an Employee of the public agency Employer that made the contribution. Such contribution shall be allocated in proportion to the appropriate Participant's Base Salary during the payroll period or in such other manner as may be provided by an amendment to this Plan that is effective prior to such contribution.
- 2.22 Employment Commencement Date  
Employment Commencement Date shall mean the date an Employee is first employed by the Employer.
- 2.23 Entry Date  
The Entry Date for an Eligible Employee shall be the first day of employment on which the Employee becomes an Eligible Employee or any day thereafter.

2.24 Investment Policy Statement

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

2.25 Employer Matching Contribution

Matching Contribution shall mean a contribution made by the Employer pursuant to the participants memorandum of understanding (MOU), employment contract or salary ordinance on behalf of participants who contribute the required salary deferral to the 457(b) Deferred Compensation Plan.

2.26 Normal Retirement Age

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

2.27 Participant

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

2.28 Pay Period

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

2.29 Plan

The Plan shall mean the employee benefit plan set forth in this document and as amended hereafter, which is known as:

“The San Bernardino County 401(a) Defined Contribution Plan.”

2.30 Plan Administrator

The Plan Administrator shall mean the County's Human Resources Benefits Chief of the Employee Benefits and Services Division who shall exercise the discretion or other functions given to the County under the Plan.

- 2.31 Plan Record Keeper  
Plan Record Keeper, custodian or investment manager means the financial service firm who has contracted with the County to provide recordkeeping, custodial and/or investment management services for the Plan.
- 2.32 Plan Year  
Plan Year means a calendar year.
- 2.33 State  
State means the State of California
- 2.34 Termination of Employment  
Termination of Employment means separation from service or severance from employment within the meaning of Treasury Regulation 1.401(k)-1(d)(2), or on account of the Participant's death or retirement.
- 2.35 Trust  
Trust shall mean the legal entity created by this Plan.
- 2.36 Trustee  
Trustee shall mean an individual or individuals or institutional corporate trustee selected by the County to safeguard the Trust assets and to carry out the directions of the Plan Administrator and the Defined Contribution Committee.
- 2.37 Trust Fund  
Trust Fund shall mean all property of every kind held or acquired by the Trustee under this Trust.

### **ARTICLE III PARTICIPATION / ELIGIBILITY**

- 3.01 Election to Participate  
Each Eligible Employee may elect to become a Participant on his or her Entry Date.
- 3.02 Continuation of Participation  
A person will continue to be a Participant for as long as an Account is maintained for the Participant in accordance with Section 4.01. A Participant who ceases to be an Eligible Employee, as defined in Section 2.14, will remain a Participant, but will no longer be eligible for Employer Contributions.
- 3.03 County Contributions  
Nothing in this Plan prohibits the County from making deposits to a Participant's Participant Account as additional deferred compensation for services rendered, subject to the Participant's regular contribution limits.

## **ARTICLE IV ADMINISTRATION**

### **4.01 Administration by County**

This Plan shall be administered by the County through the Plan Administrator, who shall prescribe such forms and adopt such rules and regulations as are necessary to carry out the purposes of the Plan. The County may employ investment consultants to provide advice concerning categories of investment, investment guidelines and investment policy provided, however, that the advice or recommendations of any such investment consultants shall not be binding on the County, which shall make the final determination concerning investment categories, investment guidelines, and policies.

The Plan Administrator shall have the full authority to adopt rules and regulations for the administration of the Plan and to interpret, alter, amend, or revoke any rules and regulations so adopted. The Plan Administrator shall have the full discretion to construe and interpret the terms and provisions of this Plan and all rules and regulations related thereto, which interpretation or construction shall be final and binding on all parties, except as otherwise provided by law. The Plan Administrator shall administer such terms and provisions in a uniform and nondiscriminatory manner and in full accordance with any and all laws applicable to this Plan.

The County may contract with a financially responsible independent contractor or contractors to administer and coordinate the Plan under the direction of the County. The County may also designate and authorize such general, annuity, and custodial accounts and agreements as necessary to fulfill the intendments of this Plan and Code section 401(a). The Plan Administrator shall have the right to designate a Plan coordinator or other party of its choice to perform such services under the agreement as may be mutually agreed to between the Plan Administrator and the Plan coordinator or other party.

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

### **4.02 Defined Contribution Committee**

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

4.03 Administrative Costs

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

4.04 Investment Policy Statement

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

4.05 Right to Amend, Modify and Terminate

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

4.06 Conformations

The County shall amend and interpret the Plan to the extent necessary to conform to the requirements of Code section 401(a) and any other applicable law, regulation or ruling, including amendments that are retroactive. In the event the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Code section 401(a) or any other applicable law, the County shall correct such inconsistency within the period provided in Code section 401(a).

4.07 Plan Termination

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

4.08 Maintenance of Records

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

4.09 Valuation of Accounts

The Plan Administrator shall determine the frequency of the determination of the current market value of the Accounts in the Plan, but no less frequently than

annually. The Plan Administrator may require the Plan Record Keeper to make such valuation on a daily basis. As of each such valuation, all investment income and capital gains and losses (both realized and unrealized), which have occurred since the preceding valuation, shall be proportionately allocated in an equitable manner among the Participant's Accounts. In the event more than one pooled investment fund is being utilized, such allocation shall be performed separately with respect to each such investment fund. All Contributions by or for the Participant, less any distributions and expense charges, shall also be credited to his Accounts.

4.10 Allocation of Contributions

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

4.11 Determinations and Adjustments Binding on Participants

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

**ARTICLE V  
CONTRIBUTIONS**

5.01 Employer Contributions

Biweekly contributions for Eligible Participants as defined in Section 1.14(a) and Section 1.14(b) shall be the contribution as provided in the County Code section 13.0614(b). Employer Contributions shall not exceed the amount set forth in Code section 415(c). In the event that the limitations set forth in Code section 415(c) are exceeded, then the Plan Administrator shall direct the Plan Record Keeper as to the proper correction method permissible under the Code and other applicable Internal Revenue Service guidance, including calculation of earnings or losses and the proper tax reporting with respect to such distribution.

5.02 Employee Rollover Contribution

(a) Amounts that are considered Eligible Rollover Distributions in accordance with Code section 402(c)(4) may be rolled over by a Participant from an Eligible Retirement Plan. The amounts rolled over from an Eligible Retirement Plan may be separately accounted for.

(b) For purposes of this section, amounts rolled over from an eligible retirement plan shall mean:

(i) amounts rolled to the Plan directly from another Eligible Retirement Plan;



- (ii) distributions received by Participant from another Eligible Retirement Plan that are eligible for tax free rollover to a 401(a) plan and that are rolled over by the Participant to the Plan within sixty (60) days, following his receipt thereof;
- (iii) amounts rolled over to the Plan under subparagraphs (i) and (ii) by Participant who is also a surviving spouse or a spouse or former spouse who is an alternative payee as defined in Code section 414(p).

5.03 Limitations on Annual Additions

Notwithstanding any other Plan provisions, the Annual Additions to each Participant's account for any Plan Year will not exceed the least of the following:

- (a) \$51,000, adjusted to take into account any cost-of-living increase adjustments provided for the Plan Year under Code section 415(d); or
- (b) One hundred percent (100%) of the Participant's Compensation for the Plan Year.

5.04 Employer Matching Contribution

Biweekly contributions for eligible Participants as defined in Section 2.27 shall equal to a percentage of a Participant's Base Salary as specified by the Participants Memorandum of Understanding, Employment Contract, or Salary Ordinance. Employer Matching Contributions shall not exceed the amount set forth in Code section 415(c). In the event that the limitations set forth in Code section 415(c) are exceeded, then the Plan Administrator shall direct the Plan Record Keeper as to the proper correction method permissible under the Code and other applicable Internal Revenue Service guidance, including calculation of earnings or losses and the proper tax reporting with respect to such distribution.

## **ARTICLE VI INVESTMENT FUNDS**

6.01 Investment of the Contributions

Contributions shall be held for the exclusive benefit of Participants and their Beneficiaries under one or more annuity contracts, which may provide for guaranteed rates of interest, or under variable investment options.

6.02 County's Investment Rights

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



6.03 Fund Investment Options

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

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

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

6.04 Change in Investment of Future Contributions

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

6.05 Change in Investment of Existing Account

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

6.06 Investment Disclaimer

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

6.07 Participant Exercise of Control

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

6.08 Statements

The County, through the Plan Record Keeper, will cause to be issued statements periodically to reflect the actual earnings, gains, contributions and losses posted

to the Participant Accounts, as well as the balance of each account as of the most recent calendar quarter.

## **ARTICLE VII BENEFITS AND DISTRIBUTIONS**

### 7.01 Vesting of Benefits

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

### 7.02 Benefit Payments

Payment of benefits under any of the provisions of this Plan shall be made by the Plan Record Keeper in accordance with the directions of the Defined Contribution Committee as to method, commencement date, amounts and payees unless the Participant elects otherwise in writing fully describing the benefits and commencement date of benefits. Notwithstanding any provision in the Plan to the contrary, the payment of benefits to a Participant shall be made in accordance with the requirements of Code section 401(a)(9) and the regulations hereunder including the minimum distribution incidental benefit requirement.

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

### 7.03 Distribution Limitations

Employer Contributions as defined in Article V are not distributable earlier than upon one of the following events:

- (a) the Participant has reached his or her Normal Retirement Date as defined in section 2.26 and has separated from service; or
- (b) the Participant has attained age 59½; or
- (c) the Participant has separated from service prior to his or her Normal Retirement Age as defined in Section 2.26; or
- (d) the Participant has died or become Disabled, as defined by the County Employees Retirement Law of 1937; or

- (e) The Plan has been served with a court-approved domestic relations order determined acceptable by the Plan Administrator or its designee.

#### 7.04 Form of Benefit Payment

- (a) Benefits shall be paid in one of the following ways:
  - (i) by a full or partial lump sum payment. This will be the automatic form of payment if the value of the Participant's account is less than \$5,000 or a lower amount as determined by the Defined Contribution Committee; or
  - (ii) payments by installments by continuation of the account in the trust with adjustments for periodic valuations subject to (b) below.
- (b) If payment is by installments, the following shall apply:
  - (i) Installment payments shall be made at least annually. A participant may elect to vary the amount or frequency of any such payments at least once each calendar quarter. However, at no time may the installment period exceed the Participant's life expectancy.
  - (ii) Installments shall normally be substantially equal over the period of payout. Variations may occur because of redetermination of the Participant and spouse's life expectancy under Section 7.05 or changes in the account balances because of trust investment results. The installment sizes may also be changed by the recipient subject to the rules of the Defined Contribution Committee and applicable law.
  - (iii) Installments in any year shall not be less than an amount determined by dividing the account balances by the joint and last survivor life expectancy of the Participant and designated Beneficiary as of the first of the year, starting with the year in which payments begin.
- (c) No distribution from this Plan shall be made in the form of a life annuity.

#### 7.05 Limitation on Form of Benefit

- (a) Subject to (b) of this section, benefits may be paid over a period not longer than the life expectancy of the Participant and of the designated Beneficiary, if any.
- (b) The Plan Record Keeper shall determine installment sizes and life expectancies as of the benefit starting date using actuarial assumptions acceptable to the Treasury Department. The life expectancy of a Participant or spouse may be recalculated annually.

- (c) The present value of payments to be made to the Participant must be over 50 percent (50%) of the value of the total benefit as of the end of the Plan Year in which the Participant retires or reaches age 65, whichever is later.
- (d) Distributions to each Participant shall be made not later than such Participant's required beginning date as determined in accordance with Code section 401(a)(9)(A), (B) and (C) and regulations hereunder.

The Participant's required beginning date is April 1 of the year following the later of:

- (i) the year in which the Participant attains age 70½, or
  - (ii) the year in which the Participant separates from service with the Employer.
- (e) Within each Account, withdrawals will be taken from amounts of all funds in which the Participant is invested on a prorated basis, or as the Participant otherwise specifies, pursuant to rules established by the Plan Administrator.

#### 7.06 Benefits Upon Death

- (a) Upon the death of a Participant, the Plan Administrator shall direct that the deceased Participant's accounts be distributed to the Participant's Beneficiary.
- (b) The Plan Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant, as the Administrator may deem appropriate. The Plan Administrator's or its designee's determination of death and of the right of any person to receive payment shall be conclusive.
- (c) Notwithstanding any provision in the Plan to the contrary, distribution upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code section 401(a)(9) and the regulations there under including the minimum distribution incidental benefit rules.
- (d) If minimum payments under Code section 401(a)(9) have not begun upon the death of a Participant and the designated Beneficiary is not the Participant's surviving spouse, death benefit payments must:
  - (i) begin to be distributed to the designated Beneficiary no later than the December 31 of the calendar year immediately following the calendar year of the Participant's death payable over a period not to exceed the life expectancy of the Beneficiary; or

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

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

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

## **ARTICLE VIII BENEFICIARIES**

### **8.01 Beneficiary Designation**

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

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

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

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

## **ARTICLE IX NON-ASSIGNABILITY**

### 9.01 Non-Assignment of Account Benefits

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

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

## **ARTICLE X ROLLOVERS AND TRANSFERS**

### 10.01 Rollovers from the Plan

- (a) Notwithstanding any provision of the Plan to the contrary, a Participant shall be permitted to elect to have any Eligible Rollover Distribution transferred directly to an Eligible Retirement Plan specified by the Participant. The Participant shall, in the time and manner prescribed by the Plan Administrator, specify the amount to be rolled over and the Eligible Retirement Plan to receive the transfer. Any portion of a distribution which is not rolled over shall be distributed to the Participant.

- (b) The election described in subsection (a) also applies to the surviving spouse after the Participant's death or a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Code section 414(p).

10.02 Transfer to County Retirement Plan

Participants may elect to transfer all or a portion of their Employer Contribution Account or Employee Rollover Contribution Account and/or amounts in their Accounts attributable to direct rollovers to the San Bernardino County Employees' Retirement Association (SBCERA), for the purpose of purchasing prior service credit in accordance with the County Employee's Retirement Law of 1937 (Gov. Code, § 31641, et seq.), and applicable Resolutions of the Board of Retirement of SBCERA, or for the purpose of purchasing additional service credit in accordance with Government Code section 31658. The amount so transferred shall not exceed the amount to be used for such purpose.

A transfer must be made on the appropriate form filed with the Plan Administrator. The transfer will be made as soon as administratively feasible following approval of the transfer by the Plan Administrator.

The Plan Administrator may establish rules for the administration of this section.

**ARTICLE XI  
DOMESTIC RELATIONS ORDERS**

11.01 Domestic Relations Orders

The Plan Record Keeper, on the County's behalf, shall accept Domestic Relations Orders (DRO) meeting the requirements of Code section 414(p)(1) as modified by Code section 414(p)(11) to transfer all or a portion of the Participant's account to an alternate payee. All transfers or distributions made pursuant to a DRO are subject to the tax reporting provisions outlined in section 5.01.

**ARTICLE XII  
TRUSTEE**

12.01 Duty of Trustee

The Trustee shall be selected by the County upon recommendation by the Defined Contribution Committee. The duties of the Trustee shall be confined to safeguarding the Trust assets and carrying out the directions of the Defined Contribution Committee. The Trustee shall assume such level of investment responsibility as the Defined Contribution Committee may direct. The directions of the Defined Contribution Committee to the Trustee may be verbal unless the Trustee requests a written confirmation. The Trustee shall be fully protected in acting upon any authorization or direction given to the Trustee in the form



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

#### 12.02 Powers of Trustee

In the discharge of its duties as described herein, the Trustee shall have all powers necessary to hold in trust and administer the Trust Fund as contemplated hereby, including, but not limited to the power:

- (a) To receive the income of the Trust Fund;
- (b) To pay the expenses of the Trust (including any taxes) out of the Trust Fund, including reasonable compensation for its services as Trustee (if and to the extent that the Employer does not pay such expenses and compensation);
- (c) To employ suitable agents and counsel and pay their reasonable expenses and compensation out of the Trust Fund (if and to the extent that the Employer does not pay such expenses and compensation);
- (d) To manage, control, sell, convey, exchange, partition, divide, subdivide, improve and repair; to grant options and to sell upon deferred payment; to lease for terms within or extending beyond the duration of this Trust, for any purpose, including exploration for removal of gas or other minerals, to enter into community oil leases; to create restrictions, easements and other servitudes; to compromise and defend action and proceedings; to carry such insurance for the protection of the Trust estate as the Trustee may deem advisable;
- (e) To invest and reinvest, without distinction between principal and income, any money at any time held in trust hereunder in any securities, including common and preferred stocks, bonds, put and call options (including the granting of option to purchase and sell securities), interest in limited partnerships whose purpose is investing and reinvesting in securities or property, or in any other property, real or personal, tangible or intangible, including real estate loans and common trust funds established by the Trustee or other institutional Trustees and to retain as part of the Trust



Fund any securities or other property received or acquired by it; irrespective of whether or not such securities or other property are approved by law as investments for trust funds;

- (f) To hold uninvested any cash contributions to the Trust Fund and to create reserves of cash or other assets of the Trust Fund, without liability for interest thereon, for the payment of expenses, or for distribution pursuant to the Plan, or for any other purpose in connection with the Plan;
- (g) To deposit any monies at any time held in the Trust Fund in any savings bank or in the savings department of any bank or Trust company including, where applicable, the savings department of the Trustee;
- (h) To borrow money, including purchasing stock on margin, and to secure the same by mortgage, deed of trust, or pledge of the Trust Fund, or any asset constituting a part thereof, and to pay and discharge any and all indebtedness of the Trust or any liens or other charges against the Trust Fund;
- (i) To have, respecting bonds, shares of stock and other securities, all the rights powers and privileges of an owner, including holding securities in the names of the Trustee or in the name of a nominee with or without disclosures of the Trust, voting, giving proxies, making payments of calls, assessments or other sums deemed by the Trustee expedient for the protection of the Trust Fund, exchanging securities, selling or exercising stock subscriptions or conversion rights participating in foreclosures, reorganization, consolidations, mergers, liquidations, pooling agreements, voting trusts, and assenting to corporate sales, leases and encumbrances;
- (j) To enter into any contracts with, or purchase life insurance or annuity contracts, issued by any insurance company or insurance companies as investments of the Trust and for the purpose of providing for the payment of all or any part of the benefits payable under the Plan, and to disburse under any such contracts or for the purchase of any such contracts any monies held in the Trust Fund. If the terms of any such policy or contract conflict with the provisions of the Plan, the provisions of this Plan shall control;
- (k) To borrow the cash values of annuity or insurance contracts held in the Trust Fund. The Trustee may invest such borrowed funds in any security or other property including premiums for the same or other insurance or annuity contracts held by or applied for by the Trustee for purposes of the Trust. The Trustee's power hereunder shall be exercised only as directed by the Defined Contribution Committee.

- (l) To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust Fund; to commence to defend legal proceedings for or against the Trust; and to represent the Trust in all proceedings in any court of law or equity or before any other body or tribunal. The Trustee shall not exercise any of the powers conferred upon it by this Section 8.02 without first giving notice of the action proposed to be taken to the Defined Contribution Committee and obtaining written approval of such action from the Defined Contribution Committee.

#### 12.03 Liability of Trustee

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

#### 12.04 Retention of Assets Pending Settlement of Dispute

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

#### 12.05 Fees or Expenses

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

#### 12.06 Maintenance of Accounts and Records

The Trustee shall keep accurate and detailed records and accounts with respect to all assets included in the Trust Fund, and all investments, receipts and disbursements and other transactions involving the Trust, including individual and separate voluntary contribution accounts for individual employees participating in the Plan. All such accounts, books and records shall be open for inspection at all reasonable times by the Defined Contribution Committee or by any person or persons duly authorized by the Defined Contribution Committee or otherwise required by law. Within one hundred twenty (120) days following the close of each Plan Year of the Trust, the Trustees shall render to the Defined Contribution Committee accounts of its administration of the Trust during the period since the

last valuation date. An independent auditor shall at the same time submit a report on the financial statements and administrative procedures.

12.07 Valuation of Trust Fund

If the Trustee shall determine, in making any valuations under the terms of this Plan, that the Trust Fund, or any separately held account, consists in whole or in part of property not traded freely, on a recognized market, or that information necessary to ascertain the fair market value thereof is not readily available the Trustee may (but shall not be required to) request the Defined Contribution Committee for instructions as to the valuation to be placed on such property. The Defined Contribution Committee shall, with the assistance of someone competent in such matters, determine the value of such property and such determination shall be conclusive and binding for all Plan purposes. If the Defined Contribution Committee shall fail or refuse to instruct the Trustee as to the value of any such property within the time permitted the Trustee to make any required valuation, the Trustee may place fair and reasonable value upon such property and shall not be liable to any of the parties enumerated in the preceding sentence for loss or damage in so doing

12.08 Resignation or Removal of Trustee

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

12.09 Approval of Trustee's Account

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

12.10 Appointment of Successor Trustee

Resignation or removal of the Trustee shall not terminate the Trust. In the event of vacancy in the Trusteeship of this Trust occurring at any time, the County shall appoint a successor Trustee. Any such successor Trustee shall have all the powers and duties herein conferred upon the original Trustee. The title to all Trust property shall automatically vest in a successor Trustee without the execution or filing of any instrument or the doing of any act, but the resigning or

removed Trustee shall, nevertheless execute all instruments and do all acts which would otherwise be necessary to vest such title or record in any successor. The appointment of a successor Trustee may be effected by amendment to this Plan or by written action of the Employer without such amendment, the agreement of successor Trustee to act as such being evidenced by its execution of such amendment or of a copy of such resolution.

12.11 Payments to and Distributions from the Trust Fund

The Trustee shall from time to time, on the written direction of the Defined Contribution Committee or Plan Administrator, make payments out of the Trust Fund to such persons, in such manner, in such amounts, and for such purposes as may be specified in the written directions of the Defined Contribution Committee, and upon any such payment being made, the amount thereof shall no longer constitute a part of the Trust Fund.

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

**ARTICLE XIII  
INVESTMENT OF TRUST FUNDS**

13.01 Plan Establishes Trust Fund

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

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

13.02 Trust Fund for Benefit of Participants

No person shall have any rights or interest in or to the Trust hereby created or the Trust Fund or under one or more contracts described in Code section 401(f), or any part thereof, except as expressly provided herein. Notwithstanding any other provisions hereof, or, any amendments hereof to the contrary, at no time shall the Trust Fund, or any part thereof, revert to or become the property of the Employer to be used for or diverted to purposes other than for the exclusive benefit of Participants and former Participants or their respective Beneficiaries or estates, or for the administrative expenses of the Trust and the Plan, except as otherwise herein specifically provided.

13.03 Authorized Investments and Reinvestments

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

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

**ARTICLE XIV  
AMENDMENT TERMINATION OR DISCONTINUANCE  
OF CONTRIBUTIONS**

14.01 Right to Amend or Terminate the Plan

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

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

14.02 Distribution of Trust Fund Upon Termination

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

**ARTICLE XV  
MISCELLANEOUS PROVISIONS**

15.01 Contract of Employment

The Plan does not constitute a contract between any Employee and the Employer and is not a consideration or an inducement to any Employee for employment by the Employer. Nothing contained in the Plan gives any Employee the right to be

retained in the employ of the Employer or to interfere with the right of the Employer to discharge or to terminate the employment of an Employee at any time without regard to the effect of such action on Plan rights. No Participant or Beneficiary has any rights against the County or any other Employer for benefits payable under the Plan other than rights, if any, with respect to the Trust Fund.

15.02 Furnishing of Information

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

15.03 Merger of Plans

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

15.04 Substitute Payee

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

15.05 Governing Law

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

15.06 Conflicts with Applicable Law

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

15.07 Successors and Assigns

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

15.08 Written Notice

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

15.09 Gender

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

15.10 Captions

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

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

COUNTY OF SAN BERNARDINO

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