COUNTY OF NAPA  
401(a) RETIREMENT SAVINGS PLAN

**TABLE OF CONTENTS**

ARTICLE I ESTABLISHMENT OF PLAN 1

1.01 ESTABLISHMENT OF PLAN 1

1.02 EFFECTIVE DATE. 1

1.03 PLAN YEAR. 1

ARTICLE II DEFINITIONS 2

2.01 ACCOUNT 2

2.02 ALTERNATE PAYEE 2

2.03 BENEFICIARY 2

2.04 BOARD OR BOARD OF CONTROL 2

2.05 BREAK IN SERVICE 2

2.06 CODE 3

2.07 COMPENSATION 3

2.08 COMPUTATION PERIOD 3

2.09 DISABILITY 3

2.10 ELIGIBLE EMPLOYEE 4

2.11 EMPLOYEE 4

2.12 EMPLOYEE PRE-TAX SUB-ACCOUNT. 4

2.13 EMPLOYEE PRE-TAX CONTRIBUTION 4

2.14 EMPLOYER 4

2.15 EMPLOYER CONTRIBUTIONS 4

2.16 EMPLOYER CONTRIBUTIONS SUB-ACCOUNT 5

2.17 ENTRY DATE 5

2.18 FUND 5

2.19 HARDSHIP 5

2.20 HOUR OF SERVICE 5

2.21 INDIVIDUAL ACCOUNT 5

2.22 INVESTMENT ARRANGEMENT 5

2.23 INVESTMENT OPTION SPECIFICATIONS 5

2.24 LIMITATION YEAR 5

2.25 MUTUAL FUND 6

2.26 NORMAL RETIREMENT AGE 6

2.27 PARTICIPANT 6

2.28 PAYOUT OPTION 6

2.29 PLAN ADMINISTRATOR 6

2.30 PLAN YEAR 6

2.31 PRIME RATE 6

2.32 ROLLOVER CONTRIBUTIONS. 6

2.33 ROLLOVER SUB-ACCOUNT 6

2.34 QUALIFIED DOMESTIC RELATIONS ORDER (“QDRO”) 7

2.35 SEVERANCE OF EMPLOYMENT 7

2.36 TRUST AGREEMENT 7

2.37 TRUST FUND 7

2.38 TRUSTEE 7

2.39 VALUATION DATE 7

2.40 VESTED 7

2.41 YEAR OF SERVICE 7

ARTICLE III ELIGIBILITY AND PARTICIPATION 8

3.01 ELIGIBLE EMPLOYEES FOR EMPLOYER CONTRIBUTIONS 8

ARTICLE IV CONTRIBUTIONS AND FUNDING 10

4.01 EMPLOYEE PRE-TAX CONTRIBUTIONS 10

4.02 EMPLOYER CONTRIBUTIONS – General Rule 11

4.03 LIMITATION ON CONTRIBUTIONS 12

4.04 CORRECTIVE MEASURES 12

4.05 FUNDING VEHICLE 13

4.06 NOTIFICATION OF INDIVIDUAL ACCOUNT BALANCE. 14

ARTICLE V FUNDING, ROLLOVERS, AND TRANSFERS 15

5.01 INTRA-PLAN TRANSFERS 15

5.02 ACCEPTANCE OF A ROLLOVER OR TRANSFER FROM A PLAN OF ANOTHER EMPLOYER 15

5.03 VESTING AND DISTRIBUTION OF A ROLLOVER OR TRANSFER AMOUNT 15

5.04 TRANSFERS FROM A PLAN OF THE EMPLOYER 15

5.05 INAPPLICABILITY OF THIS ARTICLE IF INCONSISTENT WITH CODE 16

5.06 ROLLOVER CONTRIBUTIONS 16

5.07 ROLLOVER OR TRANSFER ONLY PERMITTED IF CONSISTENT WITH STATE AND FEDERAL LAW 16

ARTICLE VI ALLOCATIONS TO INDIVIDUAL ACCOUNTS 17

6.01 INDIVIDUAL ACCOUNTS 17

6.02 ALLOCATION OF EMPLOYEE CONTRIBUTIONS. 17

6.03 ALLOCATION OF EMPLOYER CONTRIBUTION 17

6.04 ALLOCATION OF ROLLOVER CONTRIBUTION 17

ARTICLE VII VESTING 18

7.01 VESTING 18

ARTICLE VIII DISTRIBUTIONS 19

8.01 AVAILABILITY OF DISTRIBUTIONS PRIOR TO SEVERANCE OF EMPLOYMENT. 19

8.02 AVAILABILITY OF DISTRIBUTIONS AFTER SEVERANCE OF EMPLOYMENT 19

8.03 REEMPLOYMENT PRIOR TO DISTRIBUTION. 19

8.04 FORM OF PAYMENTS 19

8.05 INVOLUNTARY CASH-OUTS 19

8.06 REQUIRED DISTRIBUTIONS 20

8.07 ALLOCATION OF PAYMENTS AND FEES 20

8.08 DISTRIBUTIONS TO MINORS 20

8.09 ROLLOVER OF PLAN ASSETS TO ANOTHER RETIREMENT PLAN 21

ARTICLE IX DEATH BENEFITS 23

9.01 BENEFIT FORMS 23

9.02 LIMITATIONS ON DEATH BENEFITS 23

ARTICLE X ADMINISTRATION OF PLAN 24

10.01 PLAN ADMINISTRATOR 24

10.02 APPLICATION FOR BENEFITS 24

10.03 DOMESTIC RELATIONS ORDER 24

ARTICLE XI LOANS AND WITHDRAWALS 26

11.01 GENERAL 26

11.02 LOAN SOURCES 26

11.03 LOAN GUIDELINES 26

11.04 TERMINATION OF LOAN PROGRAM. 28

11.05 HARDSHIP WITHDRAWALS 28

11.06 ROLLOVER WITHDRAWALS 30

ARTICLE XII TRUST FUND 31

12.01 INVESTMENT AND TRUST/CUSTODIAL FUND 31

12.02 TRUST/CUSTODIAL PROVISIONS 31

12.03 INVESTMENT OPTIONS 32

12.04 ACCOUNT 32

ARTICLE XIII MISCELLANEOUS PROVISIONS 33

13.01 ANTI-ALIENATION 33

13.02 EXCLUSIVE BENEFIT 33

13.03 GOVERNING LAW 33

13.04 CONFORMITY WITH CODE 33

13.05 NOT SUBJECT TO ERISA 33

13.06 QUALIFIED MILITARY SERVICE 33

13.07 AMENDMENT OF LAW 34

13.08 HEADINGS 34

13.09 GENDER AND NUMBER 34

13.10 NECESSARY INFORMATION 34

13.11 NO RIGHT OTHER THAN PROVIDED BY PLAN 34

13.12 INABILITY TO LOCATE PARTICIPANT OR BENEFICIARY 34

13.13 PROTECTION OF LIFE INSURANCE COMPANY 35

13.14 ANNUAL ACCOUNTING 35

13.15 REPORTING TO PARTICIPANTS 35

13.16 MISTAKE OF FACT 35

13.17 SEPARABILITY 35

ARTICLE XIV AMENDMENT OR TERMINATION 36

14.01 EMPLOYER’S RIGHT TO AMEND THE PLAN 36

14.02 EMPLOYER’S RIGHT TO TERMINATE THE PLAN 36

14.03 NOTIFICATION OF TRUSTEE 36

14.04 LIMITATION 36

14.05 MERGER, CONSOLIDATION, OR TRANSFERS OF PLAN ASSETS 37

APPENDIX A A-1

APPENDIX B B-1

COUNTY OF NAPA  
401(a) RETIREMENT SAVINGS PLAN

# ESTABLISHMENT OF PLAN

## ESTABLISHMENT OF PLAN

COUNTY OF NAPA (hereinafter the “County”) has established this profit sharing plan entitled the COUNTY OF NAPA 401(a) RETIREMENT SAVINGS PLAN (hereinafter the “Plan” or the “401(a) Plan”) for the purpose of providing retirement benefits for its Eligible Employees.

This Plan document sets forth the provisions of the Plan, is intended to be a “qualified” plan, as defined in Section 401(a) of the Internal Revenue Code of 1986, as amended (the “Code”). This Plan is also intended to be a “governmental plan”, within the meaning of Section 414(d) of the Code and within the meaning of section 3(32) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and, as such, is exempt from the provisions of Title I of ERISA.

The Plan will be administered by a Plan Administrator as more fully described in Section 10.01.

The Plan shall be funded by the purchase of Mutual Funds for Eligible Employees as further described in section 4.05 hereof.

## EFFECTIVE DATE.

The original effective date of the Plan is January 1, 2002. This Plan document is a complete amendment and restatement of the Plan. This amendment and restatement is generally effective as of January 1, 2013, except as otherwise stated herein.

## PLAN YEAR.

The Plan Year shall be the twelve consecutive month period beginning on January 1 and ending on December 31.

The initial Plan Year shall begin on January 1, 2002 and end on December 31, 2002.

# DEFINITIONS

As used in this Plan, the following words and phrases shall have the meanings set forth below:

## ACCOUNT

The account established and maintained under the Investment Arrangement for each Participant with respect to his interest in the Plan. The term “Account” may also refer to the separate Employee Pre-Tax Sub-Account, the Employer Contributions Sub-Account and the Rollover Sub-Account.

## ALTERNATE PAYEE

Any spouse, former spouse, child or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable to the Participant under the Plan.

## BENEFICIARY

The person(s) designated by the Participant to receive any benefits payable under the Investment Arrangement in the event of the Participant’s death. In the absence of a valid designation of a Beneficiary, a Participant who is married upon his death shall be deemed to have designated the Participant’s spouse as the Beneficiary. In the absence of a valid designation of a Beneficiary, a Participant who is not married upon his death shall be deemed to have designated the Participant’s estate as the Beneficiary. The interpretation of the Beneficiary designation, subject to applicable law, shall be binding and conclusive on all parties, and no person who claims to be a Beneficiary, or any other person, shall have the right to question any action of the Plan Administrator or the Board of Control.

## BOARD OR BOARD OF CONTROL

The Napa County Deferred Compensation Board of Control.

## BREAK IN SERVICE

A period of twelve consecutive months during which the Participant does not complete more than 500 Hours of Service with an Employer.

For purposes of determining whether an Employee has incurred a Break in Service, an Employee who is absent from work by reason of such Employee’s pregnancy, the birth of such Employee’s child, or the placement of a child with such Employee in connection with adoption by such Employee, or for purposes of caring for such a child for a period immediately following such birth or placement as the case might be, shall be credited with the Hours of Service which otherwise would not have been credited to such individual, or in any case in which such hours cannot be determined, 8 Hours of Service per day of such absence. Such Hours of Service shall be credited (1) in the Computation Period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or (2) in all other cases, in the next following Computation Period. This provision shall not apply, however, unless the individual furnishes to the Plan Administrator, in a timely manner, such information as the Plan Administrator may reasonably require to establish that the absence is for the permitted reasons and the length of such absence. The foregoing shall not be construed to increase the amount of Service that would otherwise be credited to an Employee or provide an employee with compensation for such hours as may be credited solely for the purpose of avoiding a break in service unless compensation is otherwise required by law.

## CODE

The Internal Revenue Code of 1986, as amended.

## COMPENSATION

### General Rule. Compensation shall mean regular or base salary or wages paid by the Employer to an Employee during the Plan Year for services rendered as an Employee plus confidential or management pay (including payments in lieu of management leave) plus any car allowance. The amount of Compensation taken into account under this Plan for any Employee for any Plan Year shall not exceed the maximum amount permitted under Section 401(a)(17) of the Code for such Plan Year

### Treatment of Employee Pre-tax Contributions. For purposes of subsection A, Compensation shall not be reduced by the amount of Employee Pre-tax Contributions, elective deferrals (as defined in Code Section 402(g)(3)), or any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125, 132(f), or 457.

### Compensation in Year of Initial Eligibility. An Employee who has satisfied the eligibility requirements for an Employer Contribution during a Plan Year shall be entitled to such contribution with respect to Compensation earned on and after the date he or she becomes a Participant.

## COMPUTATION PERIOD

The 1-year period that is used to determine whether an Employee has completed a Year of Service for purposes of section 4.01(B). Service for a portion of a year by an eligible employee shall be deemed service for the entire year for purposes of section 4.01(B).

## DISABILITY

Disability shall mean any medically determinable physical and mental impairment which, on the basis of competent medical opinion, may be expected to result in death or to be of long continued and indefinite duration, and which renders the individual incapable of performing his or her duties for the Employer.

## ELIGIBLE EMPLOYEE

An Employee who meets the requirements described in Article III, but not including any individual whose contract for services with the Employer excludes participation in employee benefit programs.

## EMPLOYEE

Any individual who performs service for an Employer as a common-law employee on the payroll of an Employer. Payroll means the system used by an entity to pay those individuals it treats as its employees for their services and to withhold employment taxes from the employee compensation it pays to such employees. Payroll does not include any system the entity uses to pay individuals whom it does not treat as its employees and for whom it does not actually withhold employment taxes (including, but not limited to, individuals it treats as independent contractors) for their services. If, during any period, the Employer has not treated an individual as an Employee and, for that reason, has not withheld employment taxes with respect to that individual, then that individual shall not be an Employee for that period, even in the event that the individual is determined retroactively to have been an Employee during all or any portion of that period. The term “Employee” excludes any individual who is an independent contractor.

## EMPLOYEE PRE-TAX SUB-ACCOUNT.

That portion of a Participant’s Individual Account attributable to the Employee Pre-Tax Contributions allocated to such Participant under Section 6.01 and any earnings or losses on such contributions.

## EMPLOYEE PRE-TAX CONTRIBUTION

Contributions made to the Plan by an Employer under Section 4.01 pursuant to a salary reduction agreement entered into between a Participant and that Employer which are treated as made by the Employer as a result of same being picked up by the Employer as described in section 4.01, and as authorized by Section 414(h)(2) of the Code. Except for the purposes of Article IV, Employee Pre-tax Contributions shall be treated as Employer Contributions.

## EMPLOYER

Employer means the County of Napa or any of the entities listed in Appendix A attached to this Plan who have consented to be included in this Plan (hereinafter an “Employer” individually or collectively as the context indicates).

## EMPLOYER CONTRIBUTIONS

Contributions made by an Employer, excluding Employee Pre-tax Contributions.

## EMPLOYER CONTRIBUTIONS SUB-ACCOUNT

That portion of a Participant’s Individual Account attributable to the Employer Contributions allocated to such Participant under Section 4.02 and any earnings or losses on such contributions.

## ENTRY DATE

The date as of which an Eligible Employee becomes a Participant as determined with reference to Article III.

## FUND

The Trust Fund.

## HARDSHIP

The events or circumstances specified in subsection C of section 11.05.

## HOUR OF SERVICE

An hour for which an Employee is directly or indirectly paid or entitled to payment for the performance of duties.

## INDIVIDUAL ACCOUNT

The aggregate of a Participant’s Employee Pre-tax Sub-Account, Employer Contributions Sub-Account and Rollover Sub-Account. A Participant shall be 100% vested in his or her Individual Account at all times.

## INVESTMENT ARRANGEMENT

A Mutual Fund described in section 2.25, or an annuity contract or other life insurance investment product purchased by the Trustee under this Plan.

## INVESTMENT OPTION SPECIFICATIONS

The Investment options selected by the Participant pursuant to Section 4.05(B).

## LIMITATION YEAR

January 1 – December 31.

## MUTUAL FUND

An open-end investment company as defined under the Investment Company Act of 1940, as amended.

## NORMAL RETIREMENT AGE

The date on which a Participant attains age 55.

## PARTICIPANT

An Eligible Employee or former Eligible Employee for whom contributions have been made under the Plan and whose Individual Account has not terminated. An Individual Account is terminated when the account balance is zero.

## PAYOUT OPTION

Any of the options for payment that may be available under an Investment Arrangement purchased under the Plan.

## PLAN ADMINISTRATOR

The entity or entities so named in Article X of the Plan.

## PLAN YEAR

The year specified in section 1.03.

## PRIME RATE

The “Prime Rate” as published in the “Money Rates” section of the “Wall Street Journal”.

## ROLLOVER CONTRIBUTIONS.

Contributions made to the Plan pursuant to Section 5.02.

## ROLLOVER SUB-ACCOUNT

That portion of a Participant’s Individual Account attributable to the Rollover Contributions allocated to such Participant under Section 5.02 and any earnings or losses on such contributions.

## QUALIFIED DOMESTIC RELATIONS ORDER (“QDRO”)

Any judgment, decree, or order (including a property settlement agreement) made pursuant to state domestic relations law which complies with the Code and applicable Treasury Regulations and:

(1) Relates to child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent; and

(2) Creates or recognizes the existence of an Alternate Payee’s right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable under a retirement plan.

## SEVERANCE OF EMPLOYMENT

The severance of the Participant’s employment with the Employer.

## TRUST AGREEMENT

The agreement(s) entered into by and between the Board and the Trustee(s).

## TRUST FUND

All funds received by the Trustee(s) under the Plan together with all income, profits and increments thereon, and less any expenses or payments made out of the Trust Fund.

## TRUSTEE

Such individual, entity, or financial institution, or a combination of them as shall be designated in the Trust Agreement to hold in trust any assets of the Plan for the purpose of providing benefits under the Plan, and shall include any successor Trustee(s) to the Trustee(s) initially designated thereunder.

## VALUATION DATE

The last day of the Plan Year.

## VESTED

The extent to which a Participant’s or Beneficiary’s right to receive benefits is nonforfeitable.

## YEAR OF SERVICE

A Computation Period during which an Employee is credited with at least 1,000 Hours of Service with the Employer.

# ELIGIBILITY AND PARTICIPATION

## ELIGIBLE EMPLOYEES FOR EMPLOYER CONTRIBUTIONS

### Eligible Classes of Employees. Except as provided in subsection B, each Employee in the following classification(s) is eligible for Employer Contributions (including Employee Pre-tax Contributions):

Napa County Non-Classified Employees;

Napa County Confidential Employees;

Napa County Management Employees;

Management Employees of Napa Superior Courts, including the Court Executive Officer;

Non-Classified Employees of Napa Superior Courts;

Management Employees of the Napa County Local Agency Formation Commissions (the “LAFCO”);

Management Employees of Napa County Flood Control and Water Conservation District (the “NCFC&WCD);

Management Employees of Children and Family First Commission (the “CFFC”);

Management Employees of the In-Home Supportive Services Public Authority of Napa County (the “IHSSPA”), including its Director and

Management Employees of the Napa Vallejo Waste Management Authority (the “NVWMA”).

### Excluded Employees. All Employees in the eligible class described in subsection A, except the members of the Board of Supervisors of the County of Napa, shall be eligible for Employer Contributions so long as they are Participants. Members of the Board of Supervisors shall be eligible for Employer Contributions if an Ordinance is adopted which provides that the members of the Board of Supervisors are eligible for the Employer Contribution established by section 4.02. All Employees in the eligible class described in subsection A, including the members of the Board of Supervisors of the County of Napa, shall be eligible for Employee Pre-tax Contributions so long as they are Participants.

### Age and Service Requirements. An Employee from the date he or she becomes a member of an eligible class shall be eligible to receive an Employer Contribution and any Employee Pre-tax Contributions without regard to his or her age or period of service.

### Computation Period. Because there is no service requirement, there is no Computation Period for purposes of determining eligibility.

### Entry Date. An Employee shall become a Participant as of the first day of the first payroll period commencing after the date the eligibility requirement set forth in subsection A is satisfied.

### Requirement to Remain Participant. Each person who becomes a Participant by executing a 401(a) Plan enrollment authorization and either (i) by making a timely contribution to the “Deferred Compensation Plan: Amended and Restated 457 Plan and Trust/Custodial Document” of Napa County (hereafter the “Employer’s 457 Plan”) or (ii) by electing to make Employee Pre-Tax Contributions shall remain a Participant so long as such person remains an Eligible Employee or has an Individual Account balance greater than zero. If a Participant severs employment, he shall cease being a Participant upon attaining a zero balance in his Individual Account. An Eligible Employee may execute a 401(a) Plan enrollment authorization at any time; provided however, that an irrevocable election may be made only during the time period set forth in section 4.01D

### Reemployed Employees. In the event an Employee ceases to be a Participant and is later reemployed as an Eligible Employee, said Employee shall once again become a Participant as of the Employee’s reemployment date. For purposes of determining eligibility for an Employer Contribution or Employee Pre-tax Contributions all of a reemployed Employee’s service with the Employer shall be taken into account.

# CONTRIBUTIONS AND FUNDING

## EMPLOYEE PRE-TAX CONTRIBUTIONS

### Eligible Employees who become Participants under this Plan may enter into an irrevocable salary reduction agreement with the Participant’s Employer in which it is agreed that the Employer will reduce the Participant’s Compensation during each pay period, and prior to its payment, by a designated percentage. In accordance with the provisions of Article III, through this one-time, irrevocable election, a Participant may authorize the Employer to deduct any whole percentage between 1% and 23% of such Participant’s Compensation, prior to its payment, and contribute the amount determined to the Plan on behalf of the Participant as an Employee Pre-tax Contribution; provided, however, that no contribution shall be less than $50 per pay period.

### In lieu of the above election, an Eligible Employee, through a one-time, irrevocable election (again involving a salary reduction agreement), may authorize the Employer to deduct the following percentage of Compensation, during each pay period, and prior to its payment, and contribute the amount determined to the Plan on behalf of the Participant as an Employee Pre-tax Contribution based on the Participant’s Years of Service as of January 1st of each calendar year:

|  |  |
| --- | --- |
| Years of Service | Percentage of Compensation |
| Less than 5.99 | 1% |
| 6.0 – 6.99 | 2% |
| 7.0 – 7.99 | 3% |
| 8.0 – 8.99 | 4% |
| 9.0 – 9.99 | 5% |
| 10.0 – 10.99 | 6% |
| 11.0 – 11.99 | 7% |
| 12.0 – 12.99 | 8% |
| 13.0 – 13.99 | 9% |
| 14.0 – 14.99 | 10% |
| 15.0 – 19.99 | 12% |
| 20.0 – 29.99 | 14% |
| 30+ | 15% |

### In lieu of either of the above elections, an Eligible Employee, through a one-time, irrevocable election (again involving a salary reduction agreement), may authorize the Employer to deduct the following percentage of Compensation, during each pay period, and prior to its payment, and contribute the amount determined to the Plan on behalf of the Participant as an Employee Pre-tax Contribution based on the Participant’s annual rate of regular or base salary determined for each year as of the later of January 1st or the date the Participant makes the one-time, irrevocable election pursuant to this subsection:

| Annual Rate of Salary | Percentage of Compensation |
| --- | --- |
| less than $51,000 | 1% |
| $51,001-$59,999 | 2% |
| $60,000-$69,999 | 3% |
| $70,000-$79,999 | 4% |
| $80,000-$89,999 | 5% |
| $90,000-$99,999 | 6% |
| $100,000-$109,999 | 7% |
| $110,000-$119,999 | 8% |
| $120,000-$129,999 | 9% |
| $130,000-$139,999 | 10% |
| $140,000-$149,999 | 13% |
| $150,000-$159,999 | 14% |
| $160,000+ | 15% |

### Only newly hired Eligible Employees may execute an irrevocable election to make Employee Pre-tax Contributions. Said irrevocable election must be executed within thirty (30) days of being hired.  For this purpose, a "newly hired Eligible Employee" is an individual who has never previously been an Employee eligible for retirement benefits under a contract between the California Public Employees' Retirement System ("Cal-PERS") and an Employer. No Employee shall be required to make Employee Pre-tax Contributions to the Plan as a condition of becoming a Participant in the Plan.

### E. The amount of the Employee Pre-tax Contribution shall be picked up by the Participant’s Employer as provided for in Section 414(h)(2) of the Code. The Participant shall not have the option to receive this picked up contribution directly and such contributions shall be paid by the Employer directly to the company or companies that issue the Investment Arrangement for funding the Plan pursuant to section 4.05 for the duration of the Participant’s employment with an Employer.

## EMPLOYER CONTRIBUTIONS – General Rule

### Each Employer shall determine, in its sole discretion, the amount of any Employer Contributions to be made to the Plan during a Plan Year. The amount of the Employer Contributions shall be established annually on or before January 1st by duly adopted Resolutions of the Employer, copies of which shall be delivered to the Board of Control acting as the Trustee of the Plan. Employer Contributions shall be invested in accordance with the Participant’s outstanding Investment Option Specifications. All Employer Contributions shall be fully vested when made.

4.02-1 EMPLOYER CONTRIBUTION INVOLVING A MATCH

Upon the adoption of a Resolution identifying the amount of an Employer Contribution for the next succeeding calendar year which is designated as a Matching Employer Contribution, the Employer shall, during that next succeeding calendar year, make a contribution in an amount equal to the contribution each Participant makes to the Employer's 457 Deferred Compensation Plan during that same calendar year; provided, however, that the Matching Employer Contribution for that calendar year shall not exceed the amount set forth in the Resolution adopted pursuant to this section.

4.02-2 EMPLOYER CONTRIBUTION NOT INVOLVING A MATCH

For contributions other than those specified in 4.02-1 (hereafter “Non-Matching Employer Contribution”), the Employer shall specify in a Resolution the amount of the Non-Matching Employer Contribution and the conditions, if any, upon which it will be made.

Non-Matching Employer Contributions shall be allocated to each Participant’s account in accordance with the criteria specified by the Employer in the Resolution adopted pursuant to this section; provided, however, that the specified criteria must result in an allocation that is definitely determinable, such as a specified number of dollars per Account or a specified percentage of each eligible Participant’s Compensation.

Whether the criteria for a Non-Matching Employer Contribution has been met shall be evaluated at the end of each calendar quarter and any required Non-Matching Employer Contribution shall be made within fifteen working days of the end of each calendar quarter.

## LIMITATION ON CONTRIBUTIONS

## Notwithstanding any other provision of the Plan, no Employee Pre-tax or Employer Contributions shall be made that would exceed the limitations on the amounts under Section 415 of the Code, and those limitations are incorporated herein by reference. Compensation for purposes of the limitations of Code section 415 shall be wages within the meaning of section 3401(a) (for purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)). For these purposes, Compensation shall not include any Pre-tax Contributions (as described in subsection B of section 2.07) and each Participant’s Compensation shall include all amounts received from any Employer (as that term is defined in section 2.14). Additionally, compensation for this purpose shall exclude compensation paid after severance from employment (including severance pay and distributions from a nonqualified deferred compensation plan) unless such compensation is paid within the later of 2 ½ months after the severance from employment or the last day of Limitation Year in which the severance from employment occurs and such compensation is (1) regular compensation for services during the Participant’s regular working hours, or compensation for services outside the Participant’s regular working hours (such as overtime or shift differential), bonuses, or other similar payments and such payment would have been paid to the Participant in the absence of a severance from employment; or (2) is payment of accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if his or her employment had continued. Effective January 1, 2009, and in accordance with section 414(u)(12)(A)(ii) of the Code, and any treasury regulations and other guidance promulgated thereunder, compensation for this purpose also includes differential pay that 1) is made by the Employer to a Participant with respect to any period during which the Participant is performing service in the uniformed services while on active duty for a period of more than 30 days and 2) represents all or a portion of the wages the Participant would have received from the Employer if the Participant had remained actively employed. If any of these limits would otherwise be exceeded, the Employee Pre-tax Contributions and the Employer Contributions for the Participant shall be reduced (in a practicable and proportional manner to be determined by the Plan Administrator) until all Contributions are within the relevant limitations. The Employer may disregard or modify a Participant’s salary reduction agreement to the extent necessary to ensure compliance with this Section. For purposes of this paragraph, Employee Pre-Tax Contributions are deemed made as of the pay date for which the salary is deferred, regardless of when the contributions are actually made to the Trust Fund.

## CORRECTIVE MEASURES

If, notwithstanding the application of section 4.03, the limits under Section 415 of the Code are exceeded for any taxable year correction with respect to such excess shall be made in accordance with the methods approved by the Internal Revenue Service in Revenue Procedure 2008-50 (or any successor thereto) or in any subsequent statutory or regulatory guidance. The Limitation Year for purposes of Section 415 of the Code shall mean the Plan Year.

## FUNDING VEHICLE

### Unless and until the Plan Administrator selects one or more other Investment Arrangements, the Plan shall be funded by the purchase of Mutual Funds for Participants. The terms and conditions of such Investment Arrangements shall be considered part of, and shall be construed as having been incorporated into, the Plan.

### Each Participant who has entered into a salary reduction agreement in accordance with Section 4.01 or has received an Employer Contribution in accordance with Section 4.02 may, by making an appropriate request, specify the Investment Option or Investment Options in which the Participant elects to have his Individual Account invested. In the absence of any valid Investment Option specification, a Participant’s Individual Account shall be invested in such Mutual Fund as may be designated by the Board of Control to be the default option in a duly adopted Resolution.

### A Participant may, by making an appropriate request, change Investment Option specifications with respect to the Participants Individual Account. Exchanges between Investment Options shall be subject to such administrative procedures as have been agreed to by the Board and the Plan Administrator.

### The Employer reserves the right to prohibit future contributions or allocations to any Investment Arrangement available under the Plan.

## NOTIFICATION OF INDIVIDUAL ACCOUNT BALANCE.

At least as frequently as annually, the Plan Administrator shall notify in writing each Participant of the amount of his Employee Pre-Tax Contributions, Employer Contributions, and Rollover Contributions, if any, for the period just completed and the balance of his Individual Account, including distributions, loans and withdrawals, if any, since the effective date of the last statement. In its discretion, the Plan Administrator may provide such notification more frequently.

# FUNDING, ROLLOVERS, AND TRANSFERS

## INTRA-PLAN TRANSFERS

A Participant may specify that a part or all of such Participant’s Account may be transferred to the Investment Arrangement of another authorized investment provider under this Plan. Transfers between investment providers are subject to each investment provider’s rules for such transfers.

## ACCEPTANCE OF A ROLLOVER OR TRANSFER FROM A PLAN OF ANOTHER EMPLOYER

Any Participant who has participated in a plan, annuity contract, or mutual fund under Section 401(a), 403(a), 403(b) and/or 457 of the Code attributable to previous employment and who has received or is entitled to receive a distribution from such other plan may elect to make a rollover contribution or a transfer to this Plan. All or a portion of the amount derived from such other plan may be rolled over or transferred provided such rollover or transfer satisfies all applicable requirements for a tax-free rollover under section 402(c) or 403(a)(4) of the Code or any successor provision of the Code, or otherwise qualifies as a tax-free transfer under generally accepted interpretations of the Code.

## VESTING AND DISTRIBUTION OF A ROLLOVER OR TRANSFER AMOUNT

Any amount that is credited to a Participant’s Account pursuant to a rollover or transfer under section 5.02 of this Plan shall be one hundred percent (100%) vested and nonforfeitable at all times. No such transfer shall have the effect of eliminating any benefit rights applicable to the transferred amounts that are protected by applicable law. In all other respects, the portion of a Participant’s Account attributable to such a rollover or transfer shall be subject to the terms of this Plan.

## TRANSFERS FROM A PLAN OF THE EMPLOYER

Any Employee who has participated in the Employer’s 457 Plan may elect to transfer all or a portion of the amount accumulated under said 457 plan to this Plan provided such transfer may be effected in a manner consistent with the terms of said 457 plan as well as the terms of this Plan. Such transfer shall only be permitted if such transfer qualifies as a tax-free transfer under generally accepted interpretations of the Code. The portion of a Participant’s Account attributable to such a transfer shall be subject to the terms of this Plan as if the contributions from which the transferred amount are derived were made under this Plan. However, no such transfer shall have the effect of reducing a Participant’s vested percentage in transferred amounts or otherwise eliminating any benefit rights applicable to the transferred amounts that are protected by applicable law.

## INAPPLICABILITY OF THIS ARTICLE IF INCONSISTENT WITH CODE

This Article shall not be construed to require this Plan to accept a rollover or transfer which may not meet the requirements for a rollover or transfer under generally accepted interpretations of the Code. The Plan Administrator may require the Participant to furnish such proof as is necessary to show the amount is eligible to be rolled over or transferred.

## ROLLOVER CONTRIBUTIONS

Rollover or transfer contributions must be in cash. Contributions in kind shall not be permitted. Rollover contributions shall be held in the Rollover sub-account. A Rollover Contribution made by a Participant to the Plan shall be invested in accordance with the Participant’s outstanding Investment Option Specifications.

## ROLLOVER OR TRANSFER ONLY PERMITTED IF CONSISTENT WITH STATE AND FEDERAL LAW

Any rollover or transfer authorized by this Article shall only be permitted if authorized by both the Internal Revenue Code and the California Revenue and Taxation Code.

# ALLOCATIONS TO INDIVIDUAL ACCOUNTS

## INDIVIDUAL ACCOUNTS

### An Individual Account shall be established and maintained in the name of each Participant, and shall be comprised of the following sub-accounts to which the Employer shall credit all amounts allocated to each such Participant: an Employee Pre-Tax Sub-Account, an Employer Contributions Sub-Account and a Rollover Sub-Account. All Sub-Accounts will be treated as one account for purposes of complying with the Participant’s outstanding Investment Option specifications.

### A Participant shall be 100% vested in his Individual Account at all times.

### The maintenance of separate accounts shall not require a segregation of the Trust assets and no Participant shall acquire any right to or interest in any specific asset of the Trust as a result of the allocations provided for in the Plan.

## ALLOCATION OF EMPLOYEE CONTRIBUTIONS.

A Participant’s Employee Pre-Tax Contributions made pursuant to Section 4.01 shall be allocated to the Participant’s Employee Pre-Tax Sub-Account, and shall be invested in accordance with the Participant’s outstanding Investment Option Specifications.

## ALLOCATION OF EMPLOYER CONTRIBUTION

Employer Contributions under Section 4.02 shall be allocated to the Participant’s Employer Contributions Sub-Account, and shall be invested in accordance with the Participants outstanding Investment Option Specifications.

## ALLOCATION OF ROLLOVER CONTRIBUTION

A Participant’s Rollover Contribution or Transfer pursuant to Sections 5.02-5.07 shall be allocated to the Participant’s Rollover Sub-Account, and shall be invested in accordance with the Participants outstanding Investment Option Specifications.

# VESTING

## VESTING

A Participant shall at all times have a fully vested and nonforfeitable interest in his or her Account under the Investment Arrangement. In the event of a participant’s attainment of Normal Retirement Age while employed by the Employer, such Participant shall become 100% Vested.

# DISTRIBUTIONS

## AVAILABILITY OF DISTRIBUTIONS PRIOR TO SEVERANCE OF EMPLOYMENT.

Prior to a Participant’s Severance of Employment, the Participant’s Account attributable to Employer Contributions and the Employee Pre-tax Contributions of the Participant shall be available for distribution once the Participant has attained Normal Retirement Age. A distribution taken pursuant to this subsection prior to the Participant’s attainment of age 59½ may be subject to the additional 10% tax imposed by Code section 72(t).

## AVAILABILITY OF DISTRIBUTIONS AFTER SEVERANCE OF EMPLOYMENT

The Participant’s Account attributable to Employer Contributions and the Employee Pre-tax Contributions shall be available for distribution at any time after the Participant’s Severance of Employment. The failure of a Participant or Beneficiary to request a distribution shall be deemed to be an election to defer distribution. A distribution taken by a Participant pursuant to this subsection prior to the Participant’s attainment of age 55 while an Employee may be subject to the additional 10% tax imposed by Code section 72(t).

## REEMPLOYMENT PRIOR TO DISTRIBUTION.

In the event a Participant who severed his employment with an Employer is reemployed with the same Employer prior to receiving the entire distribution of his Individual Account, the Participant shall not be entitled to further distributions as provided in this Article due to such severance, but shall be entitled to a distribution pursuant to Section 8.01 or upon any subsequent severance of employment.

## FORM OF PAYMENTS

Upon the occurrence of any of the distribution events specified in sections 8.01 or 8.02, but subject to the limitation contained in section 8.03, the Participant or Alternate Payee pursuant to a Qualified Domestic Relations Order shall be entitled to receive distributions under any of the Payout Options that may be provided under this Plan.

## INVOLUNTARY CASH-OUTS

### Notwithstanding sections 8.02, 8.03 and 8.04, if a Participant’s Severance of Employment occurs at a time when the Participant’s Account attributable to both Employer Contributions and Employee Pre-tax Contributions has a value not greater than $1,000, then the Participant or Beneficiary shall not be permitted to elect a payment option and shall receive a single sum distribution of the entire Account balance.

### Notwithstanding subparagraph A, a Participant who is an Employee may use all or a portion of the Participant’s Individual Account as a direct trustee-to-trustee transfer to PERS to purchase permissive service credit, provided that (a) PERS permits such a transfer; (b) the transfer involves the purchase of permissive service credit (as defined in Code Section 415(n)(3)); and (c) if the Participant has not attained Normal Retirement Age, all or the portion of the Participant’s Individual Account to be transferred (other than Rollover Contributions) has been in the Plan for at least two years.

## REQUIRED DISTRIBUTIONS

### Required minimum distributions will be determined according to Appendix B of the Plan document.

### No Payout Option shall be permitted that fails to provide for the Participant or any Beneficiary to receive for each calendar year the minimum amount required to be distributed in accordance with Section 401(a)(9) of the Code.

### All distributions under the Plan shall be made in accordance with the Income Tax Regulations under section 401(a)(9) of the Code, including Treasury Regulations section 1.401(a)(9)-2 or its successor. Such regulations are incorporated in the Plan by reference and shall override any inconsistent provisions of the Plan.

### Nothing in this section shall be construed as making available any benefit or form or time of distribution not otherwise available under an Investment Arrangement.

## ALLOCATION OF PAYMENTS AND FEES

Until all of the assets in an account are distributed, payments and fees shall be deducted on a pro-rata basis from each source and investment option.

## DISTRIBUTIONS TO MINORS

### If a person entitled to receive payment under the Plan is a minor, the Board shall distribute such payment in the following order of priority:

#### By payment to the duly appointed and currently acting guardian of the estate of the minor;

#### By payment to the minor’s custodial parent;

#### By payment to a custodian for the minor under the Uniform Gift to Minors Act;

#### By payment thereof to a responsible adult with whom the minor maintains his/her residence;

#### By payment to a responsible adult who is a relative of the minor;

#### By payment to any person determined by the Plan Administrator to be a proper distributee for the minor; or

#### By payment to a court having jurisdiction over the estate of the minor.

In the case of A2 through A6, the person to whom any amount shall be paid shall, prior to distribution, have advised the Board in writing that he or she will hold or use such amount for the benefit of such minor.

### In the event a person entitled to receive payment under the Plan is physically or mentally incapable of personally receiving and giving a valid receipt for any payment due (unless prior claim therefore shall have been made by a duly qualified legal representative of such person), such payment in the discretion of the Board may be made to the spouse, son, daughter, parent, brother or sister of the recipient or to any other person who is responsible for the welfare of such recipient.

### Any payments made under subsections A or B shall, to the extent of the payments, fully discharge the obligations of the Board and the Plan as to any other person making a claim hereunder with respect to such payments.

## ROLLOVER OF PLAN ASSETS TO ANOTHER RETIREMENT PLAN

### Direct Rollovers. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee’s election under this section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee as a direct rollover.

### Definitions.

#### Eligible Rollover Distribution. An eligible rollover distribution is 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 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 Section 401(a)(9) of the Code; any hardship distribution described under Section 401(k)(2)(B)(i)(IV) of the Code and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

#### Eligible Retirement Plan. An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in section 403(b) of the Code or a qualified trust described in Section 401(a) or 457 of the Code, that accepts the distributee’s eligible rollover distribution.

#### Distributee. A distributee includes a Participant, the Participant’s surviving spouse, the Participant’s spouse or former spouse who is the Alternate Payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code, and effective January 1, 2009, the Participant’s nonspouse Beneficiary.

#### Direct Rollover. A direct rollover is a payment by the Plan to an eligible retirement plan specified by the distributee.

# DEATH BENEFITS

## BENEFIT FORMS

### Death Before Commencement of Benefits. If a Participant dies before the commencement of distributions under a Payout Option, the Participant’s Account balance shall be payable as a death benefit to the Participant’s Beneficiary in accordance with the terms of the Investment Arrangement.

### Death After Commencement of Benefits. If distributions under the Investment Arrangement have begun and the Participant dies before his or her entire interest in the Investment Arrangement has been distributed, the remaining interest shall be distributed according to the terms of the Payout Option.

## LIMITATIONS ON DEATH BENEFITS

Notwithstanding the provisions of section 9.01, following the death of the Participant, that portion of the Participant’s Account that is subject to the requirements of Section 401(a)(9) of the Code must be distributed to the Participant’s Beneficiary in accordance with Appendix B to the Plan document, and at least as rapidly as required under Section 401(a)(9), the requirements of which are incorporated herein by reference. This generally means that:

### If the Participant dies after distributions to the Participant have commenced (within the meaning of Code Section 401(a)(9)), the remaining portion of the Participant’s interest in the Investment Arrangement must be distributed at least as rapidly as under the method of distribution in effect on the date of the Participant’s death; or

### If the Participant dies before distributions have commenced (within the meaning of Code Section 401(a)(9)), the Account must be distributed as follows: (i) if the Beneficiary is not the Participant’s surviving spouse, but is a natural person, distribution of the Account must begin on or before December 31st of the calendar year following the Participant’s death and the entire account must be paid over a period not extending beyond the life expectancy of the Beneficiary, (ii) if the Beneficiary is the Participant’s surviving spouse, distribution of the Account may be delayed until December 31st of the calendar year in which the Participant would have attained age 70½, at which time the entire account must then be paid over a period not extending beyond the life expectancy of the spousal Beneficiary or, (iii) in all other cases the Account must be fully distributed by the end of the fifth calendar year following the calendar year of the Participant’s death.

# ADMINISTRATION OF PLAN

## PLAN ADMINISTRATOR

The Plan shall be administered by a Plan Administrator. The County designates the Board of Control, or its designee, to serve as Plan Administrator by designation herein. The Plan Administrator shall have full authority and discretion to control and manage the operation and administration of the Plan, to construe and interpret the Plan, to decide all questions of eligibility and to prescribe such rules and procedures as are necessary to carry out the terms of the Plan. The Plan Administrator may delegate certain of its responsibilities and powers under this Plan to officers, employees, or agents.

## APPLICATION FOR BENEFITS

Each application for benefits must be made to the Trustee of the trust under which the benefits are payable on such forms and in accordance with the terms of the Investment Arrangement under which any such claim is made. The Trustee shall respond to any such application within a reasonable period, not to exceed 90 days after its receipt of the application. If any application for benefits is denied, the Trustee shall furnish the Participant with written notice of the specified reasons for the denial and a description of any additional information needed from, or further steps required of, the Participant. A Participant may appeal any such denial by making written application to the Trustee within 60 days of receipt of the denial. The Trustee shall respond in writing to any such appeal within 60 days of its receipt and shall give specific reasons if the appeal is denied.

## DOMESTIC RELATIONS ORDER

### For purposes of this section, an application for benefits in the form of, or pursuant to, a domestic relations order (“DRO”), shall be responded to by the Trustee only after the Plan Administrator has established that such order is a QDRO. Once an order has been established as a QDRO, benefits shall be paid in accordance with the applicable requirements of such order. Reasonable written procedures supplementing or explaining the procedures established in the remainder of this section for processing QDROs may be established by the trustee to determine the qualified status of domestic relations orders and to administer distributions pursuant to QDROs. Any such additional procedures must be adopted by the Board of Control by Resolution.

### Any DRO must:

#### Create or recognize the existence of the right of an Alternate Payee to all or a portion of the benefits payable with respect to a Participant under the Plan;

#### Clearly specify the following information:

##### The name and last known mailing address of the Participant and Alternate Payee covered by the DRO; and

##### The amount or percentage, or the manner in which the amount or percentage is to be determined, of the Participant’s benefits to be paid to the Alternate Payee; and

##### The manner in which liability for loans existing, if any, should be allocated.

##### The number of payments or period to which the DRO applies; and

##### The plan to which such DRO applies.

#### Identify the form of payment to the Alternate Payee, which must be a form permitted under the Plan; and

#### Not require the payment of benefits to an Alternate Payee if those benefits are required by a prior QDRO to be paid to another Alternate Payee.

### If it has been determined that a QDRO applies to a Participant’s account, the Plan Administrator shall comply with the QDRO. The Plan Administrator may place a restrictive hold on a Participant’s account while it determines the validity of and/or processes a QDRO. The Plan Administrator shall establish a separate Account for the Alternate Payee and transfer the assigned value or benefit from the Participant’s Account into the Alternate Payee’s Account.

### The Alternate Payee is entitled to receive distributions immediately upon the establishment of the Alternate Payee Account under Section 10.03, and commencement of distributions must begin no later than April 1st following the year in which the Alternate Payee attains age 70½, in accordance with the terms of Section 8.06. Distributions made to an Alternate Payee shall be reported as taxable income to the Alternate Payee. State taxes, if applicable, and Federal taxes will be withheld from any distribution from the Alternate Payee’s account based upon the tax withholding elections of the Alternate Payee. The Alternate Payee may not make any contributions to the Alternate Payee Account but is permitted to designate beneficiaries for the Alternate Payee Account and to exercise exchanges among the investment options as permitted by the Plan.

### If it is determined that a DRO is valid and the Participant has begun receiving distributions from the Plan, the Alternate Payee must commence distributions within sixty (60) days following the date the DRO is determined to be valid. The Administrator shall only process a QDRO to the extent possible based upon the then current value or benefit in the Participant’s Account.

Distributions to an Alternate Payee pursuant to a valid QDRO will be permitted without regard to whether the Participant would be eligible for a distribution from the Plan.

# LOANS AND WITHDRAWALS

## GENERAL

Loans shall be made available to all Participants on a reasonably equivalent basis, but only to the extent permitted under the Investment Arrangement and the provisions of this Article. No loan shall be made available under this Plan unless it satisfies all of the requirements of Section 72(p) of the Code for treatment as a tax-free loan.

## LOAN SOURCES

In no event shall a loan be made to a Participant other than from the portion of his or her Account attributable to:

Vested Employer Contributions;

Employee Pre-tax Contributions; and

Rollover Contributions.

## LOAN GUIDELINES

The making of loans under this Plan shall be subject to the following guidelines:

### An application for a loan is filed with the Plan Administrator;

### The Plan Administrator shall retain the power to approve or decline a loan and may make reasonable distinctions based on creditworthiness, other obligations of the Participant, State laws affecting payroll deductions, and any other factors that may adversely affect the Employer’s ability to deduct loan repayments from a Participant’s pay.

### A Participant may have only one loan outstanding at any time.

### The minimum new loan shall be $2,000. If a Participant’s Individual Account balance is insufficient to support the minimum loan amount because of the maximum loan restrictions set forth in subsection E, no loan shall be made.

### The maximum amount of any loan, when added to the outstanding balance of any existing loan from this Plan, shall be the lesser of:

#### $50,000 reduced by the excess of the highest outstanding balance of loans from the Plan to the Participant during the one year period ending on the day before the date the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made; or

#### One-half of the value of the vested portion of the Participant’s Individual Account on the date the loan is made.

### All loans shall be repayable over a period of not more than five years, except that a loan used by the Participant to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the Participant shall be repayable over a period of not more than ten years.

### Each loan shall be secured by one-half of the value of the vested portion of the Participant’s Individual Account balance; shall bear interest at a rate of one percent (1%) above the Prime Rate in effect on the last day of the calendar month coincident with or next preceding the calendar month in which the loan is applied for; shall be repaid by payroll deduction each pay period in accordance with a reasonable repayment schedule requiring substantially level payments of principal and interest; and shall be evidenced by a written promissory note setting forth the terms of the loan.

### A Participant may prepay the entire outstanding balance without penalty.

### There may be an administrative charge imposed on each new loan in an amount determined by the Board.

### Each loan shall be considered a separate investment option of the Individual Account of the Participant. Notwithstanding Section 6.01(C), when a loan is made, the amount of the loan shall be withdrawn from sub-accounts within the Participant’s Individual Account among the separate Investment Options in which each sub-account is invested and transferred to a segregated loan account maintained in the Participant’s name. The loan amount shall be withdrawn from the sub-accounts within the Individual Account in the following order: (1) the Rollover Sub-Account; (2) the Employee Pre-Tax Sub-Account; and (3) the Employer Contribution Sub-Account. Within each Sub-Account, the loan amount shall be withdrawn from the separate Investment Options on a pro-rata basis based on the Participant’s outstanding Investment Specifications. Payments of principal and interest against a loan shall thereafter be allocated ratably among the Sub-Accounts from which the loan was withdrawn and invested in accordance with a Participant’s outstanding Investment Option Specifications.

### In the event a Participant defaults on a loan from this Plan, the Plan shall not foreclose on so much of the Participant’s Individual Account as is given as collateral for the loan until a distributable event occurs under the Plan. For purposes of this Plan, a Participant shall be deemed to be in default on a loan if the Participant fails to make any installment payment by the last day of the calendar quarter following the calendar quarter in which the payment was due.

### In the event of the retirement, death or termination of employment of a Participant, the unpaid balance of any outstanding loan to the Participant, together with accrued interest, shall be immediately due and payable and shall be satisfied out of the Participant’s Individual Account prior to distribution if not satisfied by payment in full prior to such distribution.

### If a Participant who has an outstanding loan incurs a leave of absence, ceases loan repayment, and his rate of pay (after income and employment tax withholding) is not sufficient to meet the required repayment under the terms of the loan, then the Board shall not deem that a default has occurred for a period equal to the lesser of (1) the length of the leave of absence, or (2) one year. In this instance, when the Employee returns from the leave of absence, the Participant’s loan payments shall be reamortized over the remaining period of scheduled repayments and payments shall commence beginning with the Participant’s third payroll check.

### Notwithstanding the previous provisions, loan repayments during a period of qualified military service shall be suspended under this Plan, to the extent permitted by the Code, including but not limited to section 414(u)(4).

## TERMINATION OF LOAN PROGRAM.

The availability of loans under the Plan may be suspended, terminated, or modified at any time by the County.

## HARDSHIP WITHDRAWALS

### Notwithstanding section 8.01, upon making an appropriate request, and with the approval of the Plan Administrator, a Participant shall be allowed to withdraw all or part of the value of his Individual Account that is available under subsection E while still employed by an Employer (hereafter “Hardship Withdrawal”). Hardship Withdrawals shall be made in a lump sum payment. Hardship Withdrawals shall be approved only if the Plan Administrator determines that the Participant meets the criteria set forth in subsections C and D.

### A Participant may only make a Hardship Withdrawal pursuant to this section if the withdrawal is made on account of an immediate and heavy financial need of the Participant, as determined under subsection C, and is necessary to satisfy the financial need, as determined under subsection D. The determination of the existence of financial hardship and the amount necessary to be withdrawn to satisfy the immediate and heavy financial need created by the hardship shall be made by the Plan Administrator in a uniform and nondiscriminatory manner, in accordance with the standards set forth in the remainder of this section. A Participant requesting a Hardship Withdrawal may be required to submit whatever documentation the Plan Administrator, in its sole discretion, deems necessary to establish the existence of an immediate and heavy financial need created by the hardship and the amount necessary to be withdrawn to satisfy the immediate and heavy financial need created by the hardship.

### Hardship distributions may only be made on account of the following (deemed to be “immediate and heavy financial needs of the Participant”):

#### Expenses for medical care described in Code section 213(d) previously incurred by the Participant, the Participant’s spouse, child, or any dependents of the Participant (as defined in Code Section 152 but without regard to Section 152(b)(1), (b)(2) and (d)(1)(B)) or necessary for such persons to obtain medical care described in Code section 213(d);

#### Costs directly related to the purchase of a principal residence for the Participant (excluding mortgage or other loan payments);

#### Payment of tuition, related educational fees, including room and board expenses, for the next 12 months of post-secondary education for the Participant, the Participant’s spouse, child, or the Participant’s dependents (as defined in Code Section 152 but without regard to Section 152(b)(1), (b)(2) and (d)(1)(B));

#### Payments necessary to prevent the eviction of the Participant from his principal residence or the foreclosure on the mortgage of the Participant’s principal residence;

#### Payment of burial or funeral expenses for the Participant’s deceased parent, spouse, child or the Participant’s dependents (as defined in Code Section 152 but without regard to Section 152(d)(1)(B));

#### Payments for the repair of damage to the Participant’s principal residence that would qualify for the casualty deduction under Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income); or

#### Any other reason that the Commissioner of Internal Revenue deems to constitute an immediate and heavy financial need in accordance with Treasury Regulation §1.401(k)-1(d)(3)(iii)(B) or subsequent promulgations.

Any Hardship Withdrawal may be adjusted upwards to cover any federal, state or local taxes, including penalty taxes, that can reasonably be anticipated to result from the distribution.

### Hardship Withdrawals may only be made if the following requirements are satisfied (deemed to be “necessary to satisfy an immediate and heavy financial need of the Participant”):

#### The Hardship Withdrawal does not exceed the amount of the applicable need under subsection C;

#### The Participant has obtained all distributions, other than Hardship Withdrawals, and all nontaxable loans currently available under the Plan and any other deferred compensation plan maintained by the Employer;

#### The Participant’s elective and employee contributions under any other deferred compensation plan maintained by the Employer are suspended for a minimum of six (6) months after receipt of the Hardship Withdrawal; and

#### Such additional or alternative requirements as may be prescribed in Reg. §1.401 (k)-1(d)(3)(iv)(D) or subsequent promulgations.

### A Participant’s Hardship Withdrawal under this section shall be limited to the aggregate of all his Employee Pre-Tax Contributions made prior to the withdrawal, reduced by the amount of any prior withdrawal of such Employee Pre-Tax Contributions and further reduced by the amount of any loans. Within the Employee Pre-Tax Sub-Account, withdrawals shall be charged against the separate Investment Option Specifications.

## ROLLOVER WITHDRAWALS

Upon the request of the Participant, a Participant shall be allowed to withdraw all or part of the value of his Rollover Sub-Account for any reason after payment of any loan that is outstanding. Withdrawals made pursuant to this Section shall be made in a lump sum payment. Within the Rollover Sub-Account, withdrawals shall be charged against the separate Investment Options on a pro-rata basis based on the Participant’s outstanding Investment Option Specifications. Withdrawn amounts may not be repaid to the Trust Fund.

# TRUST FUND

## INVESTMENT AND TRUST/CUSTODIAL FUND

The County shall establish an Investment and Trust/Custodial Fund for the purpose of holding Plan assets for the exclusive benefit of the Plan’s Participants and Beneficiaries. The County may cause funds contributed under this Plan to be commingled for investment only with funds contributed under any other approved deferred compensation plan so long as the investment directives under such Plan are substantially similar to the investment directives under this Plan and so long as adequate records are maintained to enable the identification of the portion of such funds and earnings that pertain to each Plan.

## TRUST/CUSTODIAL PROVISIONS

### Trustees/Custodian. The Trustees/Custodian shall be the individual or individuals duly appointed and authorized by the County.

### Adoption of Investment Options. The Trustees/Custodian, or the County, shall work with the Plan Administrator to adopt various investment options for the investment of Plan assets. Additionally, the Trustee/Custodian or the County shall monitor and evaluate the appropriateness of those offerings by the Plan. The Trustees/Custodian or the County, may de-select options that are determined to be no longer appropriate. In the event options are de-selected, the Trustees/Custodian or County may require Participants to transfer account balances to an alternative investment option offered by the Plan. Any such requirement to transfer account balances shall be adopted by Resolution of the Board of Control. By failing to respond to a notice to transfer from a de-selected option, Participants and their Beneficiaries agree that no Plan fiduciaries will be liable for any investment losses, or lost investment opportunity under the Plan.

### Designation of Fiduciaries. The County, Trustees/Custodians, and their designees are fiduciaries under the Plan. Each fiduciary has only those duties or responsibilities specifically assigned to him under the Plan or delegated to him in writing by another fiduciary. Each fiduciary may assume that any direction, information or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction or information. Except as provided by law, no fiduciary will be responsible for the malfeasance, misfeasance or nonfeasance of any other fiduciary.

### Fiduciary Standards.

#### The Trustees/Custodian and all other fiduciaries shall discharge their duties with respect to this Plan solely in the interest of the Participants and Beneficiaries of the Plan. Such duties shall be discharged for the exclusive purpose of providing benefits to the Participants and Beneficiaries and defraying expenses of the Plan.

#### All fiduciaries shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person 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 as defined by applicable State law.

### Trustees/Custodian’s Powers and Duties.

The Trustees/Custodian’s powers and duties shall be those defined under applicable State law and the Trust/Custodian Agreement(s).

### Exempt Status. This Plan and Investment and Trust/Custodial Fund is intended to be exempt from taxation under Section 501(a) of the Code and is intended to comply with Section 401(a) of the Code. The Trustees/Custodian shall be empowered to submit or designate appropriate agents to submit this Plan and Investment and Trust/Custodial Fund to the Internal Revenue Service for a determination of the eligibility of the Plan under Section 401(a), and the exempt status of the Investment and Trust/Custodial Fund under Section 501(a).

## INVESTMENT OPTIONS

Each Participant may allocate the balances of his Account under the Plan among the investment options provided under the Plan. A Participant may change his investment options in accordance with rules established by the Employer and/or the investment providers.

## ACCOUNT

The Plan Administrator shall maintain an Account for each Participant to hold any Employee Pre-tax Contributions, Employer Contributions, and Rollover Contributions, as well as any gains or losses of such funds. Each Participant’s Account shall be revalued at least annually to reflect the earnings, gains and losses creditable thereto or debitable therefrom in accordance with the performance of the investment options selected by the Participant. The earnings, gains and losses creditable to or debitable from an Account shall mean the actual earnings, gains and losses of each investment option, on a pro rata basis, among the Accounts of those Participants who selected that investment option.

# MISCELLANEOUS PROVISIONS

## ANTI-ALIENATION

Any benefit or interest available under the Plan, any right to receive payments under the Plan, or any payment made under the Plan shall not be subject to assignment or alienation, garnishment, attachment, transfer or anticipation, execution or levy, whether by the voluntary or involuntary act of any interested person under the Plan, except for a benefit or interest which becomes payable pursuant to a Qualified Domestic Relations Order.

## EXCLUSIVE BENEFIT

This Plan is established for the exclusive benefit of the Participants and their Beneficiaries. Except as otherwise provided by this Plan, no amounts held under the Plan shall ever inure to the benefit of any Employer or any successor of the Participant or Beneficiary. All amounts held under the Plan shall be held for the exclusive purpose of providing benefits to the Participants and their Beneficiaries.

## GOVERNING LAW

This Plan shall be governed by and construed according to the laws of the state of California except in those areas preempted by the laws of the United States of America.

## CONFORMITY WITH CODE

This Plan is established with the intent that it conforms to the requirements of Section 401(a) and other applicable provisions of the Code. The provisions of this Plan shall be interpreted whenever possible in conformity with the requirements of the Code.

## NOT SUBJECT TO ERISA

This Plan is established and maintained as a plan that is exempt from the requirements of Title I of the Employee Retirement Income Security Act of 1974, as provided by Section 4 of such statute.

## QUALIFIED MILITARY SERVICE

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. Effective January 1, 2007, if a Participant dies on or after January 1, 2007, while performing qualified military service, the Beneficiary of that Participant is entitled, to the extent required by Section 401(a)(37) of the Code or any treasury regulations or other guidance promulgated thereunder, to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment on the day immediately before the Participant’s death and then terminated employment on account of death.

## AMENDMENT OF LAW

Where the law (including, but not limited to, the Code) governing the Plan is amended, modified, or interpreted through subsequent legislation, or rulings, or decisions, the Plan’s provisions should be construed, insofar as is feasible, in accordance with such amendment, modification, or interpretation of the law.

## HEADINGS

The headings and subheadings of this Plan have been inserted merely for convenience of reference, and in no way define or limit the scope of any of the provisions and are to be ignored in any construction of the provisions.

## GENDER AND NUMBER

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

## NECESSARY INFORMATION

All Eligible Employees shall provide the Plan Administrator and any trustee of a trust established under the Plan with any information that may be needed for the proper and lawful operation and administration of the Plan; including, but not limited to, appropriate evidences of the Employee’s age and marital status, his or her current address, the current address of the Employee’s spouse, and the current address of any other Beneficiary.

## NO RIGHT OTHER THAN PROVIDED BY PLAN

The establishment of this Plan and the purchase of any Investment Arrangement under the Plan shall not be construed as giving to any Participant or Beneficiary or any other person any legal or equitable right against any Employer or its representatives, except as is expressly provided by this Plan. No Participant in the Plan shall acquire any right to be retained in any Employer’s employ by virtue of the Plan, nor, upon the Participant’s dismissal, or upon the Participant’s voluntary termination of employment, shall be have any right or interest in and to the Fund other than as specifically provided herein No Employer shall be liable for the payment of any benefit provided for herein. All benefits hereunder shall be payable only from the Fund.

## INABILITY TO LOCATE PARTICIPANT OR BENEFICIARY

In the event that all, or any portion, of any distribution payable to a Participant or his or her Beneficiary hereunder shall, at the expiration of three (3) years after it shall become payable, remain unpaid solely by reason of the inability of the Plan Administrator or Trustee of the trust, to ascertain the whereabouts of such Participant or his or her Beneficiary, the amount so distributable shall be disposed of in accordance with the Unclaimed Property Law (commencing with section 1500 of the California Code of Civil Procedure).

## PROTECTION OF LIFE INSURANCE COMPANY

Any life insurance company that issues an Annuity Contract under this Plan and any Trustee of any trust established under this Plan shall be protected and held harmless by an Employer in acting according to any direction, if in writing or otherwise reasonably believed to be genuine, of the Employer, the Plan Administrator, or any delegate thereof, and shall not be required to question any such direction. Regardless of any provision of this Plan, a life insurance company shall not be required to take or permit any action, or allow any benefit or privilege, contrary to the terms of any Investment Arrangement which it may issue under the Plan and a trustee shall not be required to take or permit any action, or allow any benefit or privilege, contrary to the terms of any trust that may be established under the Plan.

## ANNUAL ACCOUNTING

The Plan Administrator shall direct the Trustee, as of each Valuation Date, to determine the net worth of the assets comprising the trust as it exists on the Valuation Date prior to taking into consideration any contribution to be allocated for the Plan Year. As of each Valuation Date and at such other date(s) as selected by the trustee, any earnings or losses in the value of Plan assets shall be allocated to Participant’s Account and shall be debited for payments made, if any, and credited with any dividends or interest earned.

## REPORTING TO PARTICIPANTS

A statement of accrued benefits will be sent to each Participant at least once each Plan Year.

## MISTAKE OF FACT

Notwithstanding anything herein to the contrary, upon an Employer’s request, a contribution to this Plan which was made by a mistake of fact may be returned to the Employer by the Trustee within one year after the payment of the contribution provided the funds have not been distributed.

## SEPARABILITY

If any provision of the Plan shall be held invalid for any reason, that holding shall not affect the remaining provisions of the Plan which shall be construed and enforced as if the invalid provision had not been included in the Plan.

# AMENDMENT OR TERMINATION

## EMPLOYER’S RIGHT TO AMEND THE PLAN

The County reserves the right to amend the Plan at any time, provided that no such amendment may cause any amounts held under the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries, and provided further that no amendment of the Plan may reduce the benefits accrued by or the amount credited to the Account of any Participant, reduce any Participant’s Vested percentage in that portion of the Participant’s Account attributable to Employer Contributions made before the day such amendment is adopted or becomes effective, whichever is later.

## EMPLOYER’S RIGHT TO TERMINATE THE PLAN

Continuance of this plan is not assumed as a contractual obligation. In the event of termination of the Plan, the Board shall value the Fund as of the date of termination. The Individual Accounts of the Participants and Beneficiaries affected by the termination, as determined by the Board, shall continue to be administered as a part of the Fund or distributed to such Participants or Beneficiaries as the Board, in its sole discretion, shall determine. Any distributions upon Plan termination of amounts attributable to Employee Pre-Tax Contributions shall only be made to the extent permissible by the Code. Any Employer may terminate its participation in the Plan upon sixty (60) days notice to the Trustee and the Plan Administrator in the form of a duly adopted Resolution. In the event of termination or partial termination of the Plan, a Participant’s benefits accrued to the date of such termination or partial termination, to the extent funded as of such date, or the amounts credited to the Participant’s account, are nonforfeitable.

## NOTIFICATION OF TRUSTEE

Notwithstanding section 14.01, no amendment shall increase the duties, powers and liability of the Trustee without its written consent. Any amendment to the Plan shall be set forth in an instrument in writing a copy of which shall be provided to the Trustee as soon as practicable following its adoption.

## LIMITATION

Notwithstanding the provisions of section 14.01, contributions may be returned to an Employer if the Internal Revenue Service does not initially issue a favorable determination letter on the Plan’s qualified status under Section 401(a) of the Code.

## MERGER, CONSOLIDATION, OR TRANSFERS OF PLAN ASSETS

The Plan will not be merged or consolidated with any other plan, nor will any of its assets or liabilities be transferred to another plan, unless immediately after a merger, consolidation, or transfer of assets or liabilities, each Participant would receive a benefit under the plan which is at least equal to the benefit he or she would have received immediately prior to a merger, consolidation, or transfer of assets or liabilities (assuming in each instance that the Plan had then terminated).

**IN WITNESS WHEREOF**, this Instrument was approved at a duly noticed meeting of the Napa County Board of Supervisors and the Chairman of the Board of Supervisors was authorized to execute same on behalf of the Employer on December 17, 2013.

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BRAD WAGENKNECHT, Chairman of the Board of Supervisors

“COUNTY”

ATTEST: GLADYS COIL,

Clerk of the Board of Supervisors

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPROVED BY THE NAPA COUNTY**

**BOARD OF SUPERVISORS**

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Processed by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy Clerk of the Board

**APPROVED AS TO FORM**

Office of County Counsel

By: Susan B. Altman (by e-signature)

Date: December 3, 2013

|  |  |  |
| --- | --- | --- |
| cc/d/defcomp/401(a)/ 2013 restated plan |  |  |

Appendix A

Napa Superior Courts

Local Agency Formation Commissions (LAFCO)

Napa County Flood Control and Water Conservation District (NCFC &WCD

Children and Family First Commission (CFFC)

In-Home Supportive Services Public Authority of Napa County (IHSSPA)

Management Employees of the Napa Vallejo Waste Management Authority (NVWMA)

Appendix B

MINIMUM DISTRIBUTION REQUIREMENTS

SECTION 1. GENERAL RULES.

(a) Precedence. The requirements of this Appendix will take precedence over any inconsistent provisions of the Plan.

(b) Requirements of Treasury Regulations Incorporated. All distributions required under this Appendix will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

SECTION 2. TIME AND MANNER OF DISTRIBUTION.

(a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(ii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 2(b), other than Section 2(b)(i), will apply as if the surviving spouse were the Participant.

For purposes of this Section 2(b) and Section 4, unless Section 2(b)(iv) applies, distributions are considered to begin on the Participant's required beginning date. If Section 2(b)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 2(b)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 2(b)(i)), the date distributions are considered to begin is the date distributions actually commence.

(c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 3 and 4 of this Appendix. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

SECTION 3. Required Minimum Distributions During Participant's Lifetime.

(a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(i) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(ii) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

SECTION 4. Required Minimum Distributions After Participant's Death.

(a) Death On or After Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 4(a).

(ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 2(b)(i), this Section 4(b) will apply as if the surviving spouse were the Participant.

SECTION 5. DEFINITIONS

(a) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 2.03 of the Plan and is the designated Beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(b) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 2(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(c) Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

(d) Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(e) Required beginning date. A Participant’s required beginning date (as specified in subsection A of section 8.06) is April 1st of the year following the year the Participant attains age 70½ or retires, whichever is later.

SECTION 6. 2009 REQUIRED MINIMUM DISTRIBUTIONS.

Notwithstanding Section 2 of this Appendix B, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are equal to the 2009 RMDs will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distribution described in the preceding sentence. Notwithstanding any other provision of the Plan, 2009 RMDs shall be treated as Eligible Rollover Distributions under Section 8.09.