

ALAMEDA COUNTY

457(b) DEFERRED COMPENSATION PLAN

Originally Effective as of May 14, 1974

Restated as of January 1, 2009

Amended as of July 8, 2014

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COUNTY OF ALAMEDA  
457(b) DEFERRED COMPENSATION PLAN  
AMENDED AND RESTATED PLAN DOCUMENT  
Effective as of January 1, 2009 and as amended

**Section 1. Name:**

The name of this Plan is the County of Alameda 457(b) Deferred Compensation Plan, hereinafter referred to as the "Plan."

**Section 2. Purpose:**

The primary purpose of the Plan is to attract and retain personnel by permitting them to enter into agreements with the Employer that will provide for deferral of payment of a portion of their current Compensation until death, disability, retirement, termination of employment, or other events as provided herein, in accordance with the provisions of Sections 53212-53214 of the Government Code of the State of California, Section 457(b) of the Code, the Treasury Regulations promulgated under Section 457(b) of the Code and other applicable Sections of the Code. Except as otherwise stated herein, this amended Plan shall become effective as of January 1, 2009.

**Section 3. Definitions:**

For the purposes of this Plan when used and capitalized herein the following words and phrases shall have the meanings set forth below.

3.1 "Account" means the book account maintained in accordance with Section 7.4 for the purpose of recording Compensation deferred by a Participant as either pre-tax salary deferrals and/or Roth Elective Deferrals (defined in Section 10) pursuant to his Participant Agreement, transfers of funds into the Plan as a result of Rollover Contributions, Roth Rollover Contributions, and investment gains or losses allocated thereto, and includes the following subaccounts.

(a) "Salary Deferral Account" means that portion of a Participant's Account which is attributable to a Participant's pre-tax salary deferrals, if any, as provided in Section 4.1, and a Participant's Limited Catch-Up Deferrals or Special Catch-Up Deferrals, if any, as provided in Sections 5.1(b) and 5.1(c), as adjusted by such other amounts properly debited or credited to such Account.

(b) "Rollover Contribution Account" means that portion of a Participant's Account attributable to Rollover Contributions, if any, as defined in Section 3.22, as adjusted by such other amounts properly debited or credited to such Account.

(c) "Roth Elective Deferral Account" means that portion of a Participant's Account attributable to Roth Elective Deferrals, if any, as provided in Section 10, as adjusted by such other amounts properly debited or credited to such Account.

d) "Roth Rollover Contribution Account" means that portion of a Participant's Account attributable to Roth Rollover Contributions, if any, as provided in Section 10.3(b), as adjusted by such other amounts properly debited or credited to such Account.

3.2 "Administrator" means the third party service provider or providers with whom the County contracts either investment, record-keeping or other management services for the Plan.

3.3 "Alternate Payee" means any spouse, former spouse, child or other dependent of a Participant who is recognized by a Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under this Plan with respect to such Participant.

3.4 "Applicable Dollar Amount" means the "applicable dollar amount" determined pursuant to Section 457(e)(15) of the Code and in effect for the calendar year, as adjusted for cost-of-living increases in accordance with Treasury Regulation Section 1.457-4(c)(4).

3.5 "Beneficiary" means the person or persons a Participant designates to receive his interest under the Plan after the Participant's death. The designation may be made, revoked, or changed only by a written instrument (in a form acceptable to the County) signed by the Participant and filed with the Employer prior to the Participant's death. If the Participant is married and designates someone other than (or in addition to) his spouse as his Beneficiary hereunder, such designation must be consented to in writing by the Participant's spouse. If no such designation is in effect at the time of the Participant's death, or if no designated Beneficiary survives the Participant, his Beneficiary shall be his estate. If no executor or administrator is appointed within six (6) months after the Participant's death, the Employer shall direct said interest to be paid to the beneficiary or beneficiaries designated in his last will, or if no will, then to the heirs at law of the Participant.

3.6 "Code" means the Internal Revenue Code of 1986, as amended.

3.7 "Compensation" means the total of all amounts which would be paid by the Employer to or for the benefit of an Employee (if he were not a Participant in the Plan) for services performed during the period that the Employee is a Participant, including any amounts that may be credited to the Participant's Account. Compensation shall be taken into account at its present value and its amount shall be determined without regard to any community property laws. Compensation also includes differential pay, if any is paid by the Employer, that 1) is made by the Employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) while on active duty for a period of more than 30 days; and 2) represents all or a portion of the wages the individual would have received from the Employer if the individual had remained actively employed.

3.8 "County" means the County of Alameda.

3.9 "Custodian" means a bank, trust company or a financial institution appointed by the County to have custody of assets of the Plan, as custodian or as trustee.

3.10 "Deferred Compensation Officer" means the Treasurer of the County of Alameda

3.11 "Domestic Relations Order" means a domestic relations order described in Section 414(p)(1)(A)(i) of the Code.

3.12 "Employee" means any provisional employee as appointed by the Operating Department and approved by Human Resource Services as a representative of the Employer and any officer or permanent full-time employee of the Employer. Employee also means any rehired employee including a retired annuitant for his or her new period of employment and any permanent part-time employee or project position employee of the Employer, but does not include intermittent or seasonal employees. In addition, Employee does not include independent contractors, or contract employees whose specific contract does not provide for participation in the Plan.

3.13 "Employer" means the County of Alameda, each public entity listed in Appendix A (which may be amended from time to time) that has adopted the Plan, and each other public entity that contracts with the County to retain benefits under the Plan.

3.14 "Employment Period" means a period from January 1 through December 31 of the same year, except that the first Employment Period of an Employee hired on any date other than January 1 shall be the period beginning with the date of employment and ending on December 31 of the same year.

3.15 "Includable Compensation" means Compensation which is currently includable in gross income for federal income tax purposes, taking into account the provisions of, and adjustments specified in, Section 457 of the Code.

3.16 "Investment Options" means the vehicles available for investment under the Plan, as determined by the County.

3.17 "Limited Catch-Up Deferral" means the additional amount of Compensation that may be deferred in accordance with Section 5.1(b).

3.18 "Normal Retirement Age" means the date a Participant attains age 70-1/2 or, at the election of the Participant, any earlier date that is no earlier than the earliest age at which the Participant would have the right to retire under the County's basic pension plan and to receive immediate retirement benefits calculated without actuarial reduction. Such "earliest age" is as follows:

| Classification | <u>Government Code</u> | <u>Earliest Age</u> |
|----------------|------------------------|---------------------|
| Tier I         | §37616.12              | 57                  |
| Tier II        | §31676.1               | 57 ½                |
| Safety         | §31664                 | 50                  |

If a Participant is employed by the Employer beyond age 70-1/2, his Normal Retirement Age may be the age at which he separates from service with the Employer; provided that the distribution requirements of Section 8.7 are still satisfied with respect to the Participant, and provided further that a Participant who has utilized the Limited Catch-Up Deferral provisions of Section 5.1(b) may not thereafter change his Normal Retirement Age.

3.19 "Participant" means any Employee who fulfills the participation requirements under Section 4.

3.20 "Participant Agreement" means the agreement executed and filed by an Employee with the Employer pursuant to Section 4, under which the Employee elects to become a Participant in the Plan and to defer Compensation thereunder.

3.21 "Regulation" means a regulation promulgated under the Code by the U.S. Treasury Department.

3.22 "Rollover Contribution" means a direct rollover to this Plan of an eligible rollover distribution as defined in Section 402(c)(4) of the Code, of pre-tax amounts, made on behalf of a Participant by an Eligible Retirement Plan as defined in Section 8.9(b)(ii).

3.23 "Special Catch-Up Deferral" means the additional amount of Compensation that may be deferred in accordance with Section 5.1(c).

#### **Section 4. Participation in the Plan:**

4.1 Participation. Each Employee may elect to become a Participant in the Plan and defer payment of Compensation not yet earned by executing a written Participant Agreement and filing it with the Employer at any time during active employment. The Employer will promptly submit the agreement to the Administrator. It shall become effective in accordance with rules established by the Deferred Compensation Officer. However, in accordance with Treasury Regulation Section 1.457-4(b), the Participant Agreement (and any modification thereto) shall not be effective earlier than the first day of the next calendar month following its execution and filing, except that a Participant Agreement of a newly hired Participant, executed and filed on or before his or her hire date, may be effective on or at any time after such hire date.

4.2 Modification of Deferral. A Participant Agreement shall remain in effect until it is terminated or modified. During each Employment Period, a Participant may modify an existing Participant Agreement to effect subsequent deferrals in accordance with rules established by the Deferred Compensation Officer. Subject to the last sentence of Section 4.1, such modification must be filed by the Participant with the Employer prior to the date on which the modification is to be effective (in accordance with rules established by the Deferred Compensation Officer).

4.3 Termination of Deferral. A Participant may terminate further deferral of Compensation under the Plan by filing with the Employer an executed notice of termination of his Participant Agreement prior to the effective date of termination (in accordance with rules established by the Deferred Compensation Officer). Once further deferral of Compensation is terminated, a Participant may rejoin the Plan in accordance with rules established by the Deferred Compensation Officer. No previously deferred amounts shall be payable to an Employee upon terminating further deferral of Compensation under the Plan unless otherwise due pursuant to Section 8 hereof.

4.4 Selection of Investment Option. The Participant Agreement shall also provide for the selection, pursuant to Section 7.3, of one or more Investment Options to which the Participant's deferred Compensation shall be allocated; provided that any amounts so allocated equal or exceed a minimum of \$20.00 per biweekly pay period, except as provided in Section 5.1(a).

## Section 5. Amount of Deferrals:

5.1 Limitations. The amount of Compensation which may be deferred by a Participant is subject to the following limitations:

(a) **Annual Limitation.** Except as provided in Paragraph (b) or (c) below, the maximum amount that a Participant may defer during an Employment Period shall not exceed the lesser of the Applicable Dollar Amount or 100% of the Participant's Includable Compensation, excluding any Rollover Contributions received by the Plan under Section 9.4 below. The minimum amount that a Participant may defer is \$20.00 per biweekly pay period, provided, however, that a Participant who elected to defer less than \$20.00 per biweekly pay period in accordance with the terms of the Plan in effect prior to the date of this restatement may continue to defer such amount.

(b) **Limited Catch-Up Deferral.** For one or more of a Participant's last three Employment Periods ending before the Participant attains Normal Retirement Age, the maximum amount a Participant may defer during the Employment Period shall not exceed the lesser of:

(i) twice the Applicable Dollar Amount; or

(ii) the amount determined under the immediately following sentence; provided, however, that if the Special Catch-Up Deferral of Paragraph (c) would result in a greater amount of Compensation deferred, the participant may elect to defer any amount up to the sum of the amount specified in Paragraph (a) and the amount specified in Paragraph (c). The amount referred to in Section 5.1(b)(ii) is the sum of:

(I) the maximum amount of Compensation that may be deferred for the Employment Period as determined under Section 5.1(a) above; *plus*

(II) (A) the maximum amount of Compensation that may be deferred for any prior Employment Period or Employment Periods as determined under Section 5.1(a) above (or, for years prior to 2002, under Code Section 457(b)(2) as in effect for the applicable year); *less* (B) the Compensation deferred under the Plan for such Employment Period or Employment Periods (disregarding any annual deferrals under the Plan permitted under Paragraph (c) of this Section 5.1).

In determining the Includable Compensation of a Participant for purposes of calculating the amount described in Section 5.1(b)(ii)(I), Includable Compensation is not reduced by contributions of the amounts described in Section 5.1(b)(ii)(II).

A prior Employment Period shall be taken into account under Section 5.1(b)(ii)(II) only if such Employment Period begins after December 3, 1978, the Participant was eligible to participate in the Plan during all or any portion of the Employment Period and Compensation deferred (if any) under the Plan during the Employment Period, was subject to the maximum deferral provisions of Section 5.1(a) above.

A Participant may not elect to have the provisions of this Section 5.1(b) apply more than once, whether or not such provisions are utilized in less than all of the three Employment Periods ending before that Participant attains Normal Retirement Age, and whether or not that Participant or former Participant rejoins the Plan or participates in another qualifying Code Section 457 plan after retirement.

The provisions of this Section 5.1(b) shall be interpreted and administered in accordance with Regulations issued under Code Section 457 including, without limitation, special rules concerning application of the coordination limits in effect under Code Section 457(c)(2) prior to 2002 for purposes of determining the amounts referred to in Section 5.1(b)(ii) for years prior to 2002. The provisions of this Section 5.1(b) may not be used during the Employment Period in which the Participant ceases to be an Employee.

(c) Special Catch-Up Deferral. A Participant who attains age 50 by the last day of an Employment Period and who does not utilize a Limited Catch-Up Deferral for such Employment Period may make a deferral in excess of the limitation specified in Paragraph (a) above, up to the amount specified in, and subject to any other requirements of, Section 414(v) of the Code.

(d) Multiple Plans. In applying Paragraphs (a), (b) and (c) above, the amount that may be deferred by a Participant under the Plan for any Employment Period shall be reduced by the amount deferred by the Participant for such Employment Period under any other "eligible deferred compensation plan" within the meaning of Section 457(b) of the Code, as required by Section 457(c) of the Code, or any other plan to the extent required by Regulation. The Participant shall inform the Deferred Compensation Officer of his participation in any such other plan and is solely responsible for any violation of this Paragraph (d).

5.2 Excess Deferrals. The Employer shall have the right to modify or disallow the periodic deferral of Compensation elected by the Participant:

- (a) in excess of the limitations stated in Section 5.1.
- (b) in excess of the Participant's net Compensation for any pay period;
- (c) upon any change in the length of pay period utilized by Employer. In such case the periodic deferral shall be adjusted so that approximately the same percentage of pay shall be deferred on an annual basis;
- (d) in order to round periodic deferrals to the nearest whole dollar amount; or
- (e) to reduce the future deferrals in the event that the amount actually deferred for any pay period exceeds, for any reason whatsoever, the amount elected by the Participant. In the alternative, such amount of excess deferral may be refunded to the Participant.

The Employer shall distribute the amount of a Participant's deferral in excess of the distribution limitations stated in Section 5.1, together with allocable net income or loss, as soon as administratively practicable after the Plan determines that the amount is an excess deferral. For



purposes of determining whether there is an excess deferral under Section 5.1, all plans under which a Participant participates as a result of his employment with the Employer shall be treated as a single plan.

#### **Section 6. Deferral of Compensation:**

6.1 During each Employment Period in which the Employee is a Participant in the Plan, the Employer shall defer payment of such part of the Participant's Compensation as is specified by the Employee in the Participant Agreement which the Participant has executed and filed with the Employer. The Employer shall promptly remit such deferred Compensation to the Administrator.

6.2 Notwithstanding any other provision of this Plan, the Employer, subject to the limitations of Section 5, may make additional deposits to a Participant's Account as additional Compensation for the services rendered by the Employee to the Employer during any Employment Period; provided that the Employee has elected to have such additional Compensation deferred, invested, and distributed, pursuant to this Plan, prior to the period in which the Compensation will be earned. The Employer may make such further deposits to the Plan as the Employer may deem advisable, subject, however, to the limitations set forth in Section 5.

6.3 Notwithstanding any other provision of this Plan, contributions and benefits with respect to qualified military service shall be provided in accordance with Code Section 414(u). If a Participant dies on or after January 1, 2007 while performing qualified military service (as defined in Section 414(u) of the Code), the Beneficiary of that Participant is entitled, to the extent required by Section 401(a)(37) of the Code, to any additional benefits provided under the Plan as if the Participant had resumed employment on the date immediately before his date of death and then terminated employment on account of death.

6.4 Subject to limitations of Section 5, a Participant may make a one-time election to defer amounts attributable to final vacation settlement paid by the later of 2 ½ months after settlement or the end of the calendar year in the severance from employment occurs. A Participant's special one-time election must be made before the beginning of the month in which such final vacation settlement amounts would otherwise be paid or made available to the Participant (in accordance with rules established by the Deferred Compensation Officer.) The resulting aggregated deferrals, including the election to defer final vacation settlement must not exceed the allowable annual deferral limit.

#### **Section 7. Investments:**

7.1 Investments. The Deferred Compensation Officer shall establish one or more Investment Options for the purpose of investing amounts of Compensation credited to Participants' Accounts. Any action by the County in investing deferred compensation or, approving of any such investment of funds, shall not be considered to be either an endorsement or guarantee of any investment, nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations as provided in Section 8 of this Plan.

7.2 Assets. The Investment Options shall be comprised of mutual fund shares, guaranteed investment accounts with one or more insurance companies or other assets as specified from time to time by the County. The County shall appoint an independent investment advisor who shall also act as fiduciary with respect to the selection of the investment options. The assets constituting any Investment Option shall be held at the discretion of the County by one or more Custodians appointed for this purpose, for the exclusive benefit of Participants and their Beneficiaries and shall not be available for the payment of the County's debts. Neither the existence of an Investment Option nor the appointment of a Custodian, Administrator, or independent investment advisor shall be deemed to entitle any Participant or Beneficiary or creditor of a Participant or Beneficiary to a claim or lien against the assets of the Investment Option, except with respect to the claim by Participants and Beneficiaries for their benefits hereunder.

7.3 Election of Investment Options. Each Participant may allocate the Compensation deferred by him under his Participant Agreement among the Investment Options. A Participant may change his Investment Option choices in accordance with rules established by the Deferred Compensation Officer. Such modification may affect transfers of Compensation already deferred from one Investment Option to another and/or may prospectively change the investments to which future deferrals of Compensation shall be allocated, effective as soon as practicable after the filing of the modification.

7.4 Account. The Employer shall maintain an Account for each Participant to which shall be credited such Participant's deferred Compensation at such times as it would have been payable but for the terms of his Participant Agreement, and Rollover Contributions, and reduced by the amount of distributions. In addition, each Participant's Account shall be revalued to reflect the investment gains and losses in accordance with the performance of the Investment Options selected by the Participant pursuant to Sections 4.4 and 7.3. Such investment gains and losses shall mean the actual earnings, gains and losses of any Investment Option allocated on a pro-rata basis among the Accounts of those Participants who selected that Investment Option.

7.5 Statements of Accounts. Participants shall be given written statements of the balances of their Accounts with such frequency as the Administrator shall determine, in its sole discretion, but not less frequently than annually.

## **Section 8. Distribution of Benefits:**

### **8.1 Payments on Separation from Service.**

(a) Subject to the provisions of Section 8.7, upon a Participant's qualified severance from employment with the Employer, as defined by Treasury Regulation Section 1.457-6(b), (and as determined by the Employer in its sole discretion), the entire amount credited to his Account (less any federal, state or local income tax required to be withheld therefrom) shall be paid to him in a single lump sum as soon as practicable; provided, however, that in the event that the Participant's Account balance exceeds \$1,000 (exclusive of any Rollover Contributions and earnings thereon) such Account shall be retained in the Plan until the Participant elects in a manner prescribed by the Deferred Compensation Officer a later date for first receiving payment under the Plan. In addition, a Participant may elect a different method of payment as

provided in Section 8.2 by filing the appropriate form with the Employer no later than thirty (30) days prior to the Participant's elected payment date. For purposes of this Section 8.1, a Participant who has been on active duty for more than 30 days will be treated as having severed employment during any period he or she is performing uniformed service described in Section 3401(h)(2)(A) of the Code. If a Participant elects to receive a distribution from the Plan as a result of the application of this section, the Participant cannot defer Compensation into the Plan during the 6-month period beginning on the date of such distribution.

(b) If a Participant elected, in accordance with the Plan as it existed prior to January 1, 2006, to defer the commencement of distributions beyond the first permissible payout date, then the Participant may make an election to accelerate the commencement of distributions, or further defer the commencement of distributions, provided that any later commencement date meets the required distribution commencement date provisions of Section 8.7 of the Plan and Section 457(d)(2) of the Code. In addition, a Participant with an Account balance who is receiving distributions may elect to revoke any previous irrevocable election regarding form of benefit, and receive such balance in a lump sum or other form permitted under the Plan. A Participant may not make more than one election described in this Paragraph (b) in each calendar quarter.

For purposes of the preceding paragraph, the "first permissible payout date" is the earliest date on which the Plan permits payments to begin after severance from employment, disregarding payments to a Participant who has an unforeseeable emergency.

**8.2 Optional Forms of Benefit Payment.** Subject to the provisions of Section 8.7, as an alternative to (or in combination with) payment in a lump sum, a Participant whose Account balance exceeds \$1,000 (exclusive of any Rollover Contributions and earnings thereon) may elect to receive payment under the Plan in the form of substantially equal monthly, quarterly, or semiannual or annual installments for a period not to exceed the life expectancy of the Participant or the joint life expectancy of the Participant and his Beneficiary; provided that no single payment (other than the last scheduled payment) is less than \$250.00. Any amount remaining in the Participant's Account at the end of the elected payout period shall be paid to the Participant in a single lump sum payment. Alternatively, such a Participant may elect an annuity under any one of the settlement options offered in a commercial annuity contract purchased by the Custodian using the Participant's Account balance for the purpose of providing benefit payments for the life of the Participant or the joint lives of the Participant and his Beneficiary. An Employee who is rehired by the Employer after electing a periodic form of benefit described herein, shall continue to receive such periodic payments attributable to his prior Account balance. Any additional amounts credited to such Participant's Account after reemployment shall be paid in a single lump sum upon subsequent severance from employment with the Employer in accordance with Section 8.1 above unless the Participant elects an optional form described herein for such additional amounts.

**8.3 Emergency Withdrawals.** Except as otherwise provided in Section 8.7, distributions to or on behalf of a Participant shall be made only in the event of his qualified severance from employment with the Employer, unless such Participant experiences an Unforeseeable Emergency. "Unforeseeable Emergency" means a severe financial hardship to the Participant resulting from (a) an illness or accident of the Participant, the Participant's spouse, or a dependent of the Participant, (b) the Participant's loss of property due to casualty, or (c) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Examples of events which may cause an "Unforeseeable Emergency" are catastrophic illness, flood, fire, earthquake, death in the family or disabling injury. The need to

pay for the funeral expenses of the Participant's spouse, a Participant's domestic partner who is named as a primary beneficiary under the Plan and is formally registered with the County of Alameda, or dependent or the need to pay for medical expenses, including non-refundable deductibles and the cost of prescription drug medication, may constitute an Unforeseeable Emergency. For purposes of this paragraph, the term "dependent" means a dependent as defined in Section 152 of the Code but without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code. Withdrawals will not be permitted for expenditures normally budgetable, such as, but not limited to, a down payment on a home, purchase of an automobile, or education expenses. Withdrawal will not be allowed to the extent that the hardship may be relieved (i) through reimbursement or compensation by insurance or otherwise, (ii) by liquidation of the Participant's assets (to the extent such liquidation would not itself cause severe financial hardship), or (iii) by cessation or temporary suspension of deferrals under the Plan. Withdrawals of amounts because of an Unforeseeable Emergency will be permitted only to the extent reasonably needed to satisfy the emergency. A Participant who experiences such an Unforeseeable Emergency may apply to the Employer for a withdrawal which shall be permitted, in accordance with rules established by the Deferred Compensation Officer, who makes the final decision, only to the extent it complies with the requirements of this Section 8.3 and, in the case of a married Participant, only if the spouse has consented in writing to such withdrawal. Any amount approved hereunder for emergency withdrawal shall be paid to the Participant in a single lump sum (less any applicable withholding taxes). The withdrawal shall be effective at the later of the date specified in the Participant's application or the date approved by the Deferred Compensation Officer.

#### 8.4 Withdrawal of Rollover Contributions.

A Participant may take an in-service withdrawal of his Account for amounts attributable to Rollover Contributions as defined in Section 3.22. Effective July 1, 2011, a Participant may take an in-service withdrawal of his Inactive Account described in Section 8.8 below for amounts attributable to Roth Rollover Contributions.

Amounts attributable to Rollover Contributions may be subject to an early withdrawal penalty if the Participant is not age 59 ½. Note that amounts attributable to Roth Rollover Contributions may be subject to special tax rules at withdrawal. It is the Participant's responsibility to determine whether a withdrawal is subject to the early withdrawal penalty or not or other tax consequences upon in-service withdrawal.

8.5 **Loans.** The Deferred Compensation Officer is authorized to adopt rules permitting a Participant to take a loan against his Account.

(a) A Participant may also take a loan against his Account for amounts attributable to Rollover Contributions as defined in Section 3.22.

(b) A Participant may not take a loan against the Roth Elective Deferral portion of the Participant's Account.

#### 8.6 Payments on the Death of a Participant.

(a) Death after Benefit Commencement. If the Participant dies after having begun to receive installment payments in accordance with Section 8.2, payment of the remainder of such scheduled payments shall be suspended for a period of sixty (60) days after the Participant's death.

During such sixty-day suspension period, the Beneficiary of such Participant may elect to receive the balance then credited to the Participant's Account in a single lump sum or in installments as specified under Section 8.2, provided that the Participant's Account will be distributed to the Beneficiary at least as rapidly as under the method of distribution being used prior to the Participant's death. If no such election is made by the Beneficiary by the end of the sixty (60)-day suspension period, the remaining installment payments selected by the Participant shall be paid to the Beneficiary.

(b) Death Prior to Benefit Commencement. If the Participant dies before distribution of his Account commences, his Beneficiary shall receive distribution of such Participant's Account as provided under Sections 8.1 and 8.2, treating the Beneficiary as if he were the Participant; provided, however:

(i) if the Beneficiary is not the Participant's surviving spouse, the Beneficiary must either elect a distribution payable over a period not extending beyond the life expectancy of the Beneficiary, commencing no later than the end of the calendar year following the calendar year in which the Participant died, or elect a lump sum to be made no later than the end of the calendar year which contains the fifth anniversary of the date of death of the Participant and in the event no election is made, a lump sum payment of the Account balance shall be made by the end of such calendar year.

(ii) if the Beneficiary is the Participant's surviving spouse, surviving spouse may elect a lump sum payment or installments payable over a period not extending beyond the life expectancy of the surviving spouse. Distributions to the surviving spouse must commence on or before the later of the calendar year immediately following the calendar year in which the Participant died or the year the Participant would have attained age 70 ½. If the surviving spouse dies before his or her payments begin, subsequent distributions shall be made as if the surviving spouse had been the Participant. For purposes of this Subparagraph, payments will be calculated by use of the return multiples specified in Section 1.72-9 of the Treasury Regulations, without recalculation of life expectancies.

#### 8.7 Provisions Required Pursuant to Code Section 401(a)(9).

##### (a) Timing and Amount of Required Distributions.

(i) Notwithstanding any provision of the Plan to the contrary, to the extent required by Section 401(a)(9) of the Code, distribution of a Participant's entire Account shall commence not later than April 1 following the calendar year in which he attains age 70-1/2, provided the Participant has separated from service with the Employer. Unless the form of distribution is a single lump sum payment, distributions shall be made over a period not exceeding the life expectancy of the Participant, or the joint life expectancy of the Participant and his Beneficiary.

(ii) If the Participant's entire Account is to be distributed in a form other than a single lump sum payment, then the amount to be distributed each year must be at least an amount equal to the quotient obtained by dividing the Participant's entire Account balance (determined as of the last valuation date of the preceding calendar year) by the life expectancy of the Participant or (if applicable) the joint life expectancy of the Participant and his designated Beneficiary. Life expectancy and joint life expectancy shall be computed by the use of the return multiples contained in Section 1.72-9 of the Treasury Regulations. For purposes of this

computation, life expectancies may not be recalculated.

(b) **Interpretation.** To the extent required by Code Section 401(a)(9), the provisions of this Section 8.7 shall override any distribution options in the Plan that are inconsistent with this Section. All distributions under the Plan shall be made in accordance with Regulations issued under Section 401(a)(9) of the Code.

8.8 **Inactive Accounts.** Notwithstanding any other provision herein to the contrary, a Participant may elect distribution of his or her entire Account balance (less any required federal or state taxes to be withheld) prior to a qualified severance from employment in the event that all of the following conditions apply:

(a) The Account balance does not exceed \$5,000;

(b) No deferral of Compensation has been made by the Participant within the two-year period ending on the date of the distribution; and

(c) There has been no previous distribution to the Participant from the Plan pursuant to this Section 8.8.

8.9 Direct Rollover Distributions.

(a) Availability. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Plan, a distributee may elect, at the time and in the manner prescribed by the County, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the distributee in a Direct Rollover.

(b) **Definitions.**

(i) 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 often years or more; and any distribution to the extent such distribution is required under Section 401(a)(9) of the Code and any distribution described in Section 8.3. In accordance with the Regulations, a new determination of whether a distribution is an Eligible Rollover Distribution shall be made whenever a Participant who is receiving payments changes his or her distribution schedule or amount such that subsequent payments are not substantially equal to prior payments.

(ii) 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, a Roth individual retirement account described in Section 408A of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) of the Code, an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Code, or an annuity contract described in Section 403(b) that accepts the

## Distributee's Eligible Rollover Distribution.

(iii) Distributee. A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the Alternate Payee, are distributees with regard to the interest of the spouse or former spouse. A Distributee also includes a non-spouse designated Beneficiary but solely for purposes of making a direct rollover to an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code or a Roth individual retirement account described in Section 408A of the Code established as an inherited individual retirement account on behalf of the non-spouse designated Beneficiary.

(iv) Direct Rollover. A Direct Rollover is a payment by the Plan to an Eligible Retirement Plan specified by the Distributee.

(c) Purchase of Service Credit. If a Participant is also a participant in the Alameda County Employees Retirement Association ("ACERA"), such Participant may request the Employer to transfer amounts from his or her Account to ACERA for (i) the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A) and subject to the provisions of Code Section 415(n)(3)(D)), or (ii) a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3). Such transfer requests shall be granted in the sole discretion of the County, and if granted, shall be made directly to ACERA.

8.10 Nonassignability. The interest of a Participant in the contractual obligation of the Employer, established by the Plan, shall not be assignable in whole or in part, directly or by operation of law or otherwise, in any manner. Notwithstanding the foregoing, the right to benefits payable with respect to a Participant pursuant to a Domestic Relations Order may be created, assigned or recognized. The Deferred Compensation Officer shall establish reasonable procedures to determine the qualified status of Domestic Relations Orders and to administer distributions under such orders, including the establishment of a separate Account for the Alternate Payee. In the event a Domestic Relations Order exists with respect to a benefit payable under the Plan, such benefits otherwise payable to a Participant as are determined under the Domestic Relations Order will be payable to the Alternate Payee specified in the Domestic Relations Order. In addition, anything in the Plan to the contrary notwithstanding, the Deferred Compensation Officer shall follow any distribution requirement contained in a Domestic Relations Order that provides for an earlier lump sum distribution to the Alternate Payee than would otherwise be permitted under the Plan, without regard to whether the Participant has terminated employment with the Employer.

## Section 9. Miscellaneous:

9.1 No Effect on Employment. Neither the establishment of the Plan nor any modification thereof, nor the establishment of any Account, nor any agreement between the County and the Custodian or trustee, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the County or the Employer except as herein provided, and in no event shall the terms of employment of the Employee or Participant be modified or in any way affected hereby.

9.2 Assets of Plan. It is a condition of this Plan, and each Employee by participating herein expressly agrees, that he shall look solely to the assets of the Plan for the payment of any

benefit to which he is entitled under the Plan.

9.3 Construction. Except to the extent that federal law controls, this Plan shall be construed, administered and enforced according to the Constitution and laws of the State of California.

9.4 Rollover Contributions. A Participant may direct an Eligible Retirement Plan to make a direct Rollover Contribution to this Plan in his or her behalf. The Deferred Compensation Officer may require the Participant to certify, either in writing or in any other form permitted under the rules promulgated by the Internal Revenue Service (IRS), that the contribution qualifies as a Rollover Contribution. If it is later determined that all or a part of a Rollover Contribution was ineligible to be contributed to the Plan, the Deferred Compensation Officer shall direct that any ineligible amounts, plus earnings or losses attributable thereto, be distributed from the Plan to the Participant as soon as administratively feasible. Separate accounting shall be maintained by the Administrator for any Rollover Contribution not attributable to an eligible Section 457 plan maintained by a governmental employer.

9.5 Expenses. The reasonable expenses incident to the operation of the Plan, including but not limited to the internal cost to the County of Plan administration, the compensation of auditors and attorneys and such other technical and clerical assistance as may be required shall be charged to the Accounts of the Participants, to the extent not paid directly by the County.

9.6 Changes in Law. If the law governing the substantive or administrative provisions of the Plan is amended after the adoption of the Plan, the Plan provision(s) affected by such change in the law shall no longer be operative, to the extent that such provision(s) no longer accurately reflect the relevant governing law, and the Deferred Compensation Officer shall administer the Plan in accordance with the applicable legal requirements.

## **Section 10. Roth Elective Deferrals:**

### **10.1 General Application.**

(a) This Section 10 will apply to deferred contributions beginning on or after July 1, 2011 (the "Effective Date").

(b) As of the Effective Date under Section 10.1, the Plan will accept Roth Elective Deferrals made on behalf of Participants. A Participant's Roth Elective Deferrals will be allocated to the Participant's Roth Elective Deferral Account, as described in Section 10.2 below.

(c) Unless specifically stated otherwise, Roth Elective Deferrals will be treated as elective deferrals of Compensation for all purposes under the Plan.

### **10.2 Separate Accounting.**

(a) Contributions and withdrawals of Roth Elective Deferrals will be credited and debited to a Roth Elective Deferral Account, maintained for each Participant which will contain only the Roth Elective Deferrals.

(b) The Plan will maintain a record of the amount of Roth Elective



Deferrals in each Roth Elective Deferral Account.

(c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to a Participant's Roth Elective Deferral Account, Salary Deferral Account, Rollover Contribution Account, Roth Rollover Contribution Account, and any other account deemed necessary by the Administrator.

#### 10.3 Direct Rollovers.

(a) Notwithstanding any provision of the Plan to the contrary, a direct rollover of a distribution from a Roth Elective Deferral Account or Roth Rollover Contribution Account under the Plan will only be made to another Roth elective deferral account under an applicable retirement plan described in Section 402A(e)(1) of the Code or to a Roth IRA described in Section 408A of the Code, and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.

(b) Notwithstanding any provision of the Plan to the contrary, the Plan will accept a Roth Rollover Contribution to a Participant's Roth Rollover Contribution Account only if it is a direct rollover from another Roth elective deferral account under an eligible deferred compensation plan described in Section 457(b) of the Code, and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.

(c) The Plan will not provide for a direct rollover for distributions from a Participant's Roth Elective Deferral Account if the amount of the distributions that are eligible rollover distributions, within the meaning of Section 402(c)(4) of the Code, are reasonably expected to total less than \$200 during the Plan Year.

#### 10.4 Definitions.

(a) "Roth Elective Deferrals" means deferrals of Compensation that are (a) designated irrevocably by the Participant at the time of the cash or deferred election as a Roth Elective Deferral that is being made in lieu of all or a portion of the pre-tax salary deferrals the Participant is otherwise eligible to make under the Plan; and (b) treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

#### 10.5 Plan Inconsistencies.

To the extent any provision in the Plan contradicts with this Section 10, such provision is deemed to conform with this Section 10.

### **Section 11. .Amendment and Termination**

11.1 Action to Amend or Terminate. The County may at any time and from time to time by action of its appropriate body as evidenced by an instrument in writing duly executed by the County modify, amend, suspend, or terminate the Plan in whole or in part (including retroactive amendments) or cease deferring Compensation pursuant to the Plan, by delivering to each Participant a written copy of such modification, amendment or termination or of a notice that it shall cease deferring Compensation; provided, however, that the County shall not have the right to reduce or affect the value of any Participant's Account or any rights accrued under the Plan prior

to such modification, amendment, termination or cessation.

11.2 **Complete Termination.** In the event of the complete termination of the Plan by the County under Section 10.1, no additional deferrals of Compensation shall be contributed to the Plan, and existing Accounts shall be maintained and distributed in accordance with the Plan, or shall be distributed as soon as administratively practical, at the discretion of the County.

**Section 12. Plan Administration:**

12.1 **Administrative Authority.** The Deferred Compensation Officer may adopt rules and procedures for the administration of the Plan consistent with the terms of the Plan which shall be final and conclusive.

12.2 **Powers of Deferred Compensation Officer.** The Deferred Compensation Officer shall have all powers to perform all duties necessary to exercise its functions including, but not limited to, the:

- (a) Determination of Employees' eligibility, participation and benefits under the Plan.
- (b) Establishment and maintenance of written records showing at any time the interest of a Participant in his deferred compensation book Account;
- (c) Interpretation and construction of the provisions of the Plan;
- (d) Direction of the County (or the Custodian or trustee on behalf of the County) to make disbursement of benefits under the Plan;
- (e) Selection and review of any investment currently offered or under consideration to be offered as an Investment Option under the Plan;
- (f) Appointment of such agents, advisors, counsel and delegates including an Administrator as may be necessary and appropriate for the administration and operation of this Plan and the delegation to such agent, advisors, counsel and delegates of any of its discretionary and ministerial powers and duties in accordance with this Section 11; and
- (g) Composition of and provision to participants of all forms as described in the Plan

12.3 Revocability of Deferred Compensation Officer Action. Any action taken by the Deferred Compensation Officer with respect to the rights or benefits under the Plan of any person shall be revocable by the Deferred Compensation Officer as to payments or distributions not theretofore made pursuant to such actions and appropriate adjustments may be made in future payments or distributions to a Participant or Beneficiary to offset any excess payment or underpayment theretofore made to such Participant or Beneficiary.

**Section 13. Gender and Plurals:**

The masculine gender shall include the feminine and neuter gender, the masculine pronoun shall include the feminine and neuter, the singular number the plural, and conversely, whenever appropriate.

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By 

Print Name John T. Seyman

## Appendix A

### Participating Employers

Each of the public entities listed below is an Employer under the Plan.

- Alameda County Fire Department
- Alameda County Superior Court
- First 5 Alameda County