

**CONTRA COSTA COUNTY  
DEFERRED COMPENSATION PLAN  
(I.R.C. § 457)**

**(Amended and Restated Effective December 20, 2005)**

**(Amended Sections 8 and 10 Effective June 26, 2012)**

**(Amended Sections 2, 4 and 8 Effective March 23, 2021)**

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## **CONTRA COSTA COUNTY DEFERRED COMPENSATION PLAN**

**(Amended and Restated Effective December 20, 2005)**

### **SECTION 1. PURPOSE**

Contra Costa County (the "County") maintains this Contra Costa County Deferred Compensation Plan (the "Plan") in order to permit eligible employees of the County and certain other employers to defer a portion of their compensation on a pre-tax basis, and to provide for benefits upon termination of employment, retirement, emergency withdrawals, disability, or death. The Plan is intended to foster the recruitment and retention of employees of the County and other participating employers.

The Plan is intended to constitute an "eligible deferred compensation plan" within the meaning of section 457(b) of the Internal Revenue Code of 1986, as amended (the "Code"), and a "deferred compensation plan" within the meaning of section 53213 of the California Government Code.

The Plan is hereby amended and restated in its entirety effective January 1, 2005, in order to conform with the applicable requirements of the tax laws, and to otherwise clarify the intended operation of the Plan.

### **SECTION 2. DEFINITIONS**

In this Plan, whenever the context so indicates, the singular or plural number and the masculine, feminine, or neuter gender include the other, the terms "he," "his or her" and "him" refer to a Participant, and the capitalized terms have the meanings set forth in this Section 2.

2.1. "Account" means the individual account established and maintained under Section 6 for each Participant (or Beneficiary or alternate payee, to the extent such person is entitled to receive amounts under the Plan). A subaccount of an Account will be established to separately account for rollover contributions and Roth Elective Deferrals.

2.2. "Administrator" means the County or its duly authorized designee.

2.3. "Beneficiary" means a person designated in writing by the Participant before his or her death, at the time and in the manner required by the Administrator, to receive any portion of the Participant's Account after the Participant's death. A Participant also may designate a contingent Beneficiary, who will be entitled to receive any sums payable upon the death of the Participant if the primary Beneficiary does not survive the Participant. In the absence of any

effective designation or in the event of the death of all designated Beneficiaries, the Beneficiary will be the estate of the Participant.

2.4. “Code” means the Internal Revenue Code of 1986, as amended.

2.5. “Compensation” means the total of all wages, salaries, fees for professional services and other amounts paid in a Plan Year by the Employer to a Participant, including Deferrals under this Plan, and any amounts contributed by the Employer under a salary reduction agreement that are not includible in the Employee’s gross income under sections 125, 132(f), 402(b), 402(e)(3), 403(b) or 457(b) of the Code.

2.6. “County” means the County of Contra Costa or any other governmental entity of which the Contra Costa County Board of Supervisors is the governing body.

2.7. “Deferral” means the deferral under this Plan of part of a Participant’s Compensation under a Participation Agreement and the crediting of that Deferral to the Participant’s Account, and any allocations of Employer Contributions to the Participant’s Account.

2.8. “Employee” means any regular full-time, regular part-time, or project Employee of the County or any elected official of the County whose Compensation is fixed by the Board of Supervisors or pursuant to statute and who is paid by the County. Employee shall also include any employee of a Participating Employer; provided, however, that for purposes of this Plan only, all Employees who submit notice of separation from active employment shall remain Employees under this Plan until the issuance of their final compensation payment.

Notwithstanding the foregoing, “Employee” shall not include:

- (a) Any person who is included in a unit of Employees covered by a collective bargaining agreement between Employee representatives and the County, if such agreement does not provide for such individual’s participation in the Plan;
- (b) Any leased Employee, as such term is defined in section 414(n) of the Code; or
- (c) Any individual classified by the County as a contractor.

2.9. “Employee” shall not include (and has not at any time included) any individual during any period for which he is classified or treated by the County as an independent

contractor, a contract employee, a consultant or an Employee of an employment agency or any other entity other than the County, without regard to whether such individual is subsequently determined to have been a common law Employee of the County during such period.

2.10. "Employer" means the County or any Participating Employer, as applicable.

2.11. "Employer Contribution" means a contribution made by the County or a Participating Employer to the Plan.

2.12. "Normal Retirement Age" means age 50, or an older age not over 70½ designated by the Participant.

2.13. "Participant" means a current Employee who has entered into a Participation Agreement that remains in effect, or a current or former Employee who is entitled to receive benefits under the Plan.

2.14. "Participation Agreement" means the written contract designated by the County under which an Employee and an Employer agree that the Employee will participate in the Plan and defer a specified portion of his or her Compensation.

2.15. "Participating Employer" means an entity that enters into an agreement with the County to participate in this Plan, but only if that entity is a political subdivision of California, or any agency or instrumentality of California or political subdivision.

2.16. "Plan" means this Contra Costa County Deferred Compensation Plan

2.17. "Plan Year" means the calendar year.

2.18. "Required Beginning Date" means April 1st of the Plan Year following the later of the Plan Year Participant has a Severance From Employment or the Plan Year a Participant attained age 70½ if the Participant attained age 70½ on or before December 31, 2019, or the Plan Year a Participant attains age 72 if the Participant attains age 70½ on or after January 1, 2020.

2.19. "Roth Elective Deferrals" means a Deferral that is 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 Deferrals the Participant is otherwise eligible to make under the Plan and treated by the Administrator 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.

2.20. "Roth Elective Deferral Account" means the subaccount (if any) of a Participant's

Account established pursuant to Section 4.2.

2.21. “Severance From Employment” means the complete cessation of an Employee’s employment (or service, in the case of elected officials who are not common-law employees) with the County and all Participating Employers for any reason, including but not limited to death, disability or retirement.

**SECTION 3. PLAN PARTICIPATION**

3.1. Commencement of Participation. Each person who was a Participant at the close of business on December 31, 2004, will continue as a Participant on January 1, 2005. On and after January 1, 2005, each Employee may become a Participant by entering into a Participation Agreement at the time and in the manner required by the Administrator. The Employee’s participation will commence on the first day of the month after entering into the Participation Agreement.

3.2. Changes to Participation Agreement. A Participant may increase, decrease, cease or resume his or her voluntary Deferrals under the Plan by entering into a modified Participation Agreement at the time and in the manner required by the Administrator. The modified Participation Agreement will be effective on the first day of the month after it is entered into. A Participant’s Deferrals will cease upon the earlier of the effective date of the Participant’s election to cease Deferrals, the Participant’s Severance from Employment, or the termination of the Plan.

3.3. Termination of Participation. A Participant’s participation in the Plan will cease upon the earlier of the termination of the Plan, the Participant’s death, or distribution of all amounts under the Participant’s Account.

**SECTION 4. DEFERRALS**

4.1. Deferrals - General

- (a) All amounts deferred at the election of the Participant, and all Employer Contributions allocated to the Participant’s Account, under this Plan will be made as Deferrals on behalf of Participants. Except as provided in Section 4.3, Deferrals will be withheld from a Participant’s Compensation by the Employer in accordance with the Participant’s Participation Agreement.



- (b) Deferrals may be made only by or on behalf of Participants who are Employees. Deferrals under this Plan may not be made by or on behalf of any other person.
- (c) A Participation Agreement may only apply to defer payment of Compensation not yet paid or made available to the Participant.
- (d) A Participant's Deferrals may commence only at the time designated by the Administrator, but no earlier than the date the Participant commences participation in the Plan in accordance with Section 3.1.
- (e) The amount deferred may not be less than \$25.00 per month.

4.2. Roth Elective Deferrals.

- (a) Application of Section. This section will apply to contributions beginning on or after January 1, 2021.
- (b) Roth Elective Deferrals Accepted. As of the effective date of this section 4.2, the Plan will accept Roth Elective Deferrals made on behalf of Participants. A Participant's Roth Elective Deferrals will be allocated to a separate account maintained for such deferrals as described in section 4.2(c). Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Deferrals for all purposes under the Plan.
- (c) Separate Accounting.
  - (1) Contributions and withdrawals of Roth Elective Deferrals will be credited and debited to the Roth Elective Deferral Account maintained for each Participant.
  - (2) The Plan will maintain a record of the amount of Roth Elective Deferrals in each Participant's Roth Elective Deferral Account.
  - (3) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Elective Deferral Account and the Participant's other Accounts under the Plan.

- (4) No contributions other than Roth Elective Deferrals and properly attributable earnings will be credited to each Participant's Roth Elective Deferral Account.

(d) Direct Rollovers.

- (1) Notwithstanding section 10.2, a direct rollover of a distribution from a Roth Elective Deferral 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.
- (2) Notwithstanding section 10.4, the Plan will accept a rollover contribution to a Roth Elective Deferral Account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in section 402A(e)(1) of the Code and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.

4.3. Maximum Amount of Deferrals. For any Plan Year, the total Deferrals for a Participant may not exceed the greatest of the limits specified under either Sections 4.3(a), 4.3(b) or 4.3(c). The Deferral limits specified in Sections 4.3(b) or (c) will apply only if the Participant meets the eligibility conditions described under those respective Sections.

- (a) Basic Limit, No Catch-Up. For any Plan Year, a Participant may defer Compensation under the Plan up to the lesser of:

- (1) 100% of the Participant's Compensation for the Plan Year; or
- (2) the amount set forth below for the relevant Plan Year:

<u>Plan Year</u>	<u>Maximum Deferral</u>
2005	\$14,000
2006	\$15,000*

\* For Plan Years beginning after 2006, the \$15,000 limitation will be adjusted for cost-of-living increases in accordance with sections 402(g)(4) and 415(d) of the Code.

(b) Three-Year Catch-Up Limit.

(1) For each of the three Plan Years immediately preceding the Plan Year in which a Participant reaches his or her Normal Retirement Age, the Participant may defer Compensation under the Plan up to the lesser of:

(i) 100% of the Participant's Compensation for the Plan Year;

(ii) twice the dollar amount in effect under Section 4.3(a)(2) above; or

(iii) the sum of (i) maximum amount of Deferrals permitted under Section 4.3(a)(2) above for the relevant Plan Year, and (ii) the portion of the maximum amount of Deferrals available under this Plan to the Participant in prior Plan Years that were not actually deferred by or for the Participant (for this purpose, a prior Plan Year is taken into account only if the Participant was eligible in that Plan Year to participate in the Plan);

(2) For purposes of this Section 4.3(b), a Participant may elect his or her Normal Retirement Age in accordance with procedures established by the Administrator. If a Participant does not elect a Normal Retirement Age, his or her Normal Retirement Age will be age 50. Once a Participant commences Deferrals under this Section 4.3(b), his or her Normal Retirement Age may not be changed.

(c) Age 50 and Older Catch-Up Limit. For any Plan Year in which the Participant is age 50 or older by December 31 of that Plan Year, the Participant may defer Compensation under the Plan up to the lesser of:

- (1) 100% of the Participant's Compensation for the Plan Year; or
- (2) the sum of the dollar amount in effect for the Plan Year under Section 4.3(a)(2) above, plus the amount set forth below for the Plan Year:

<u>Plan Year</u>	<u>Minimum Catch-up Contribution</u>
2005	\$ 4,000
2006	\$ 5,000*

\* After 2006, the \$5,000 limit will be adjusted for cost-of- living increases in accordance with sections 414(v) and 415(d) of the Code.

4.4. Coordination of Three-Year and Age 50 and Older Catch-Up. If a Participant is eligible for any Plan Year for both the three-year catch-up limit under Section 4.3 and the age 50 and older catch-up limit under Section 4.3, only the catch-up limit that produces the greater total limit on Deferrals will apply.

4.5. Employer Contributions.

- (a) The Board of Supervisors may, in its sole discretion, authorize the County to make Employer Contributions to any designated Participant employed by the District.
- (b) A Participating Employer may make Employer Contributions to any designated Participant employed by the Participating Employer.
- (c) Employer Contributions will not be withheld from or otherwise reduce any Participant's Compensation.
- (d) Employer Contributions will be treated as Deferrals for all purposes under the Plan, including the limitations on Deferrals set forth in Section 4.3.

4.6. Correction of Excess Deferrals. If the total Deferrals for a Participant during a Plan Year exceed the applicable limitation in Section 4.3, the amount in excess of that limitation (adjusted for any allocable income or loss) will be distributed to the Participant as soon as

administratively practicable after the Administrator determines that the amount is an excess Deferral.

## **SECTION 5. TRUST**

5.1. Establishment of Trust. All Deferrals under the Plan, all property and rights purchased with those Deferrals, and all income, property, or rights attributable to those Deferrals will be held in a trust that meets the requirements of section 457(g) of the Code for the exclusive benefit of Participants and Beneficiaries. For purposes of this plan, an annuity contract that meets the requirements of Code section 401(f) shall be treated as a trust.

5.2. Transfer to Trust. Deferrals of Compensation made at a Participant's election must be transferred by the County or a Participating Employer to the trust established under Section 5.1 within a period that is not longer than reasonable for the proper administration of Participant's Accounts, but in no case later than 15 business days after the end of the month in which the Compensation would otherwise be paid to the Participant.

## **SECTION 6. ACCOUNTS**

6.1. Establishment of Accounts. The Administrator will establish and maintain a separate Account for each Participant's (or each Beneficiary's or alternate payee's) interests under the Plan. Each Account will be credited or debited, as appropriate, with the Participant's Deferrals, rollover contributions, earnings and losses on the investments in which those Deferrals and rollover contributions are placed, distributions, and charges for expenses.

6.2. Vesting. Each Participant is 100% vested in the value of his or her Account at all times, and the amounts credited to that Account will not be subject to forfeiture.

6.3. Payment of Plan Expenses. All reasonable expenses of administration of the Plan may be charged to Accounts in a reasonable manner as determined by the Administrator.

6.4. Limitation on Obligations. Without regard to the amount of Compensation deferred by a Participant, the County's and a Participating Employer's obligations to a Participant (or Beneficiary or alternate payee) are limited to the amount credited to his or her Account until the balance is paid in full. Neither the County nor any Participating Employer will be subject to any liability to any Participant (or Beneficiary or alternate payee) on account of any losses, penalties or expenses incurred as a result of his or her investment elections.

## **SECTION 7. INVESTMENT RESPONSIBILITIES**

7.1. Investment Elections. In its sole discretion, the Administrator will select the investment funds available under the Plan, and may at any time add new investment funds, or remove or freeze existing investment funds so that no new investments may be made in a frozen fund. Each Participant (or Beneficiary or alternate payee) must direct, at the time and in the manner required by the Administrator, the investment of assets in his or her Account among the available investment options, subject to any applicable minimum balance requirements. If a Participant (or Beneficiary or alternate payee) does not direct the investment of any portion of the assets in his or her Account, the Administrator will invest that portion in a Guaranteed General Account or money market fund, or both, in order to provide stability in asset value, and liquidity. If the County removes or freezes any existing investment fund under the Plan, the Administrator will notify each affected Participant (or Beneficiary or alternate payee), giving reasonable time as determined by the Administrator in its sole discretion, for each affected person to change his or her investment selections.

7.2. Amendment of Election Investment. A Participant may amend his or her investment election with respect to future Deferrals by giving written notice to the Administrator, in the time and manner prescribed by the Administrator. The amendment will take effect as soon as administratively practicable after its receipt by the Administrator.

7.3. Investment Changes. A Participant (or Beneficiary or alternate payee) may elect to transfer amounts allocated to his or her Account among and between investment funds available under the Plan at such times and in such manner prescribed by the Administrator.

7.4. Self-Directed Brokerage Account. Under terms and conditions determined by the Administrator, a Participant (or Beneficiary or alternate payee) may be eligible to utilize a self-directed brokerage account.

## **SECTION 8. DISTRIBUTIONS**

8.1. Amount of Distribution.

- (a) A distribution will be in the amount credited to an Account as of the time of distribution, or a lesser amount if distribution is made under Section 8.4, 8.7, or 8.10.
- (b) The sum of all benefits payable from this Plan to or on behalf of any Participant, Beneficiary or alternate payee may not exceed the amount credited to his or her Account.

## 8.2. When Distributions May Occur

- (a) Distribution must begin no later than the Required Beginning Date. Before then, distribution may occur only pursuant to one of the following:
  - (1) after the Participant's Severance From Employment, at the time elected by the Participant;
  - (2) an unforeseeable emergency described under Section 8.7;
  - (3) a voluntary in-service distribution under Section 8.8;
  - (4) the termination of the Plan in accordance with Section 11.2;
  - (5) a qualified domestic relations order as described under Section 11.2; or
  - (6) a Coronavirus-Related Distribution as described under Section 8.10.
- (b) If a Participant does not elect to receive distribution of the balance of his or her Account, the undistributed amount will be held under the Plan's trust until such time as the Participant elects distribution.

## 8.3. Form of Distribution.

- (a) Distributions made pursuant to an unforeseeable emergency, a voluntary in-service distribution, termination of the Plan, or qualified domestic relations order, will be paid in the forms specified under Sections 8.7, 8.8, 11.2 and 12.1, respectively.
- (b) After a Participant's Severance From Employment, he or she may elect to have his or her Account paid in any one of the following forms:
  - (1) A single lump sum payment.
  - (2) Consecutive monthly payments over a period certain not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and his or her

Beneficiary (such life expectancy to be determined as of the date of the Participant's Severance from Employment), but if the Beneficiary is not the Participant's surviving spouse:

- (i) and if Beneficiary is a Designated Beneficiary under section 401(a)(9)(E) of the Code, the balance remaining of Participant's interest, less all payments made, will be made for a period not to exceed 10 years after Participant's death, and any balance due after that term will be paid as a lump sum; and
  - (ii) and if Beneficiary is not Designated Beneficiary under section 401(a)(9)(E) of the Code, such payments will be made for a period not to exceed 5 years after Participant's death, and any balance due after that term will be paid as a lump sum.
- (3) Interest-only for a minimum payout period of five years or until age 72 whichever occurs first; provided, however, that payments may not extend beyond the periods specified in Section 8.3(b)(2). The interest rate for the entire payout period will be fixed at the time payouts commence. A Participant must be age 59½ or older to elect to receive payments under this section. Once made, an election to receive interest-only payments is irrevocable after payments have commenced. A Participant may divide deferred Compensation assets between this and other distribution options, but may not elect to receive deferred payments on funds subject to this section after expiration of the payout period.
- (4) Any of the following installment payment options:
- (A) Option 1. Payments for a specified period. Amounts payable in equal installments over a period of three to 30 years.
  - (B) Option 2. Life annuity. An annuity payable during



the life- time of the Participant or his or her Beneficiary.

- (C) Option 3. Life annuity with period certain guaranteed. An annuity payable during the lifetime of the Participant. If the Participant dies before the end of the guaranteed period, payments will continue to the Beneficiary for the remainder of the guaranteed period. The guaranteed period to be elected must be either 10, 15, or 20 years.
- (D) Option 4. Joint and survivor annuity. An annuity payment during the lifetime of the Participant and a secondary payee named by the Participant.
- (E) Option 5. Unit refund life annuity. An annuity payment during the lifetime of the Participant. Upon death of the Participant, a lump sum will be paid to his or her named Beneficiary for an amount equal to the original balance of the Participant's Account when the annuity commenced, less the amount of annuity payments already paid to the Participant.
- (F) Option 6. Combination. A combination of the methods specified under Options 1-5 above.

- (5) To the extent a Participant elects an annuity form of distribution, the Administrator will purchase the annuity with assets credited to the Participant's Account.

#### 8.4. Minimum Required Distributions.

##### (a) General Rules.

- (1) Effective Date. The provisions of this section will apply for purposes of determining required minimum distributions.
- (2) Precedence. The requirements of this section will take

precedence over any inconsistent provisions of the Plan.

- (3) Requirements of Treasury Regulations Incorporated. All distributions required under this section will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Code, as amended from time to time.
- (4) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this section, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (“TEFRA”) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.

(b) Time and Manner of Distribution.

- (1) 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.
- (2) The following provisions are effective for distributions with respect to Participants who die before January 1, 2022.
  - (i) 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:
    - (A) If the Participant’s surviving spouse is the Participant’s sole designated beneficiary, then, except as provided in section 8.4(e)(1)(iii) below, 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 72, if later.

- (B) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, except as provided in section 8.4(e)(1)(iii) below, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (C) 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.
- (D) 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 8.4(b)(2)(i), other than section 8.4(b)(2)(i)(A), will apply as if the surviving spouse were the Participant.

For purposes of this section 8.4(b)(2)(i) and section 8.4(e), unless section 8.4(b)(2)(i)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date (or, if section 8.4(b)(2)(i)(D) applies, the date distributions are required to begin to the surviving spouse under section 8.4(b)(2)(i)(A)). If annuity payments 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 8.4(b)(2)(i)(A)), the date distributions are considered to begin is the date distributions actually commence.

(3) The following provisions are effective for distributions with respect to Participants who die after December 31, 2021.

(i) Death of Participant Before Entire Interest Distributed. If

the Participant dies before his or her entire interest is distributed, the Participant's entire interest, or remainder of the Participant's entire interest if distributions have already begun to the Participant before his or her death, shall be distributed, or begin to be distributed, no later than as follows:

- (A) If the Participant's surviving spouse is the Participant's sole Eligible Designated Beneficiary, then, except as provided in section 8.4(e)(2)(ii)(D) below, distributions to the surviving spouse shall 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 72, if later.
- (B) If the Participant's surviving spouse is not the Participant's sole Eligible Designated Beneficiary, then, except as provided in 8.4(e)(2)(ii)(D) below, distributions to the Eligible Designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (C) If there is a Designated Beneficiary, but no Eligible Designated Beneficiary, as of September 30 of the year following the year of the Participant's death, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the tenth anniversary of the Participant's death.
- (D) If the Participant dies after distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's

death, distributions of the Participant's remaining interest will be distributed over the Participant's remaining Life Expectancy as described in Section 8.4(e)(2)(i). If the Participant dies before distributions begin and 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.

- (E) If the Participant's surviving spouse is the Participant's sole Eligible Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse are required to begin, this section 8.4(b)(3)(i), other than section 8.4(b)(3)(i)(A), shall apply as if the surviving spouse were the Participant.

For purposes of this section 8.4(b)(3)(i) and section 8.4(e), unless section 8.4(b)(3)(i)(E) applies, distributions are considered to begin on the Participant's Required Beginning Date. If section 8.4(b)(3)(i)(E) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 8.4(b)(3)(i)(A). 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 8.4(b)(3)(i)(A)) 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 8.4(d) and 8.4(e). 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.

(d) Required Minimum Distributions During Participant's Lifetime.

(1) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that shall 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 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.

(2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distribution shall be determined under this section 8.4(d) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

(e) Required Minimum Distribution After Participant's Death.

(1) The following provisions are effective for distributions with respect

to Participants who die before January 1, 2022.

(i) Death On or After Date Distributions Begin.

(A) 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 shall 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:

- 1) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.
- 2) 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.

- 3) 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 Designated Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) 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 shall 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.

(ii) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. Except as provided in section 8.4(e)(1)(iii) below, if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that shall 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 8.4(e)(1)(i).

- (B) 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 shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (C) 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 8.4(b)(2)(i)(A), this section 8.4(e)(1)(ii) shall apply as if the surviving spouse were the Participant.
- (iii) Participants or Beneficiaries May Elect the 5-Year Rule. Participants or Designated Beneficiaries may elect in writing, in a manner established by the Administrator, on an individual basis whether the 5-year rule or the life expectancy rule in sections 8.4(b)(1), 8.4(b)(2)(i), and 8.4(e)(1)(ii)(A) applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made at the time and in the manner designated by the Plan Administrator in its sole discretion and must be made no later than the earlier of (A) September 30 of the calendar year in which the distribution would be required to begin under sections 8.4(b)(1) or 8.4(b)(2)(i), or (B) by September 30 of the calendar year

which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor the Designated Beneficiary makes an election under this section 8.4(e)(1)(iii), distributions shall be made in accordance with sections 8.4(b)(1) and 8.4(b)(2)(i) above.

(2) The following provisions are effective for distributions with respect to Participants who die after December 31, 2021.

(i) Participant Survived by Designated Beneficiary. If the Participant dies (whether before or after distributions begin) before his or her entire interest has been distributed and there is a Designated Beneficiary, then, except as provided in section 8.4(e)(2)(ii), the Participant's entire interest shall be distributed by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(ii) Exception for Participant Survived by Eligible Designated Beneficiary.

(A) Minimum Amount Distributed. If a Participant dies (whether before or after distributions begin) before his or her entire interest has been distributed and there is an Eligible 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 Eligible Designated Beneficiary determined as follows:

1) If the Participant's surviving spouse is the Participant's sole Eligible 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.

- 2) 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.

(B) Death of Eligible Designated Beneficiary or Child Who Reaches Majority. If the Eligible Designated Beneficiary dies or, in the case of a child who is an Eligible Designated Beneficiary by reason of the child not having reached the age of majority before the Participant's death, reaches the age of majority and, therefore, ceases to be an Eligible Designated Beneficiary before the portion of the Participant's interest subject to this Section 8.4(e)(2)(ii)(B) is entirely distributed, the remainder of such portion must be distributed within 10 years of the Designated Beneficiary's death or, in the latter case, the date the Designated Beneficiary reaches the age of majority, if earlier.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin. If the Participant's surviving spouse is the Participant's sole Eligible Designated Beneficiary, and the surviving spouse dies before distributions are

required to begin to the surviving spouse under Section 8.4(b)(3)(i)(A), this Section 8.4(e)(2)(ii) will apply as if the surviving spouse were the Participant.

- (D) Participants and Eligible Designated Beneficiaries May Elect the Five-Year Rule, Ten-Year Rule. Participants or Eligible Designated Beneficiaries may elect in writing whether the five-year rule, the ten-year rule, or the life expectancy rule in Sections 8.4(b)(3)(i) and 8.4(e)(2)(ii)(A) applies to distributions after the death of the Participant who has an Eligible Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under Section 8.4(b)(3)(i) of the Plan, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, the surviving spouse's) death. If neither the Participant nor the Eligible Designated Beneficiary makes an election under this subsection, distributions will be made in accordance with Sections 8.4(b)(3)(i) and 8.4(e)(2)(ii)(A). For the 2020 Plan year only, any election required to be made under this section by September 30, 2020, is extended to September 30, 2021.

(iii) No Designated Beneficiary.

- (A) Death On or After Date Distributions Begin. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of the 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. 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.

(f) Definitions.

- (1) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 2.3 of the Plan and is the Designated Beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations. If a Participant's Beneficiary is a trust, any beneficiary of the trust shall be treated as a Designated Beneficiary under this section 8.4, to the extent the requirements of section 1.401(a)(9)-4 of the Treasury regulations are met for such beneficiary of the trust.
- (2) 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 8.4(b). The required minimum distribution for the Participant's first Distribution Calendar Year shall 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, shall be made on or before December 31 of that Distribution Calendar Year.

(3) Eligible Designated Beneficiary.

(i) An Eligible Designated Beneficiary is a Participant's Designated Beneficiary who, as of the date of the Participant's death, is:

(A) The Participant's surviving spouse;

(B) The Participant's child who has not reached the age of majority (within the meaning of section 401(a)(9)(F) of the Code);

(C) Disabled (within the meaning of section 72(m)(7) of the Code);

(D) A chronically ill individual (within the meaning of section 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof will be treated as met only if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one that is reasonably expected to be lengthy in nature); or

(E) An individual not described in any of the preceding subsections who is no more than 10 years younger than Participant.

- (ii) The determination of whether a Designated Beneficiary is an Eligible Designated Beneficiary will be made as of the date of the Participant's death; provided, however, that an individual described in Section 8.4(f)(3)(i)(B) will cease to be an Eligible Designated Beneficiary on the date the individual reaches majority, and any remainder of the portion of the Participant's interest to which Section 8.4(e)(2)(ii) applies will be distributed within 10 years of that date in accordance with Section 8.4(e)(2)(ii).
  
- (4) Life Expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
  
- (5) 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 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.
  
- (g) Temporary Waiver of Required Minimum Distributions. Notwithstanding anything to the contrary in this section 8.4, effective March 30, 2020, any Participant or Beneficiary other than a Participant or Beneficiary who has elected a series of substantially equal distributions, who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a Required Beginning Date of April 1, 2021) but for the enactment of section 401(a)(9)(I) of the Code ("2020 RMDs"), and who would have satisfied that requirement by receiving a distribution equal to the 2020 RMDs, will

not receive those distributions for 2020, unless the Participant or Beneficiary elects, at the time and in the manner prescribed by the Plan Administrator, to receive such distributions. A Participant or Beneficiary who would have been required to receive 2020 RMDs and who would have satisfied that requirement by receiving one or more payments (that include the 2020 RMDs) in a series of substantially equal distributions made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will receive those distributions for 2020, unless the Participant or Beneficiary elects, at the time and in the manner prescribed by the Plan Administrator, to not receive such distributions.

In addition, notwithstanding section 10.1 of the Plan, and solely for purposes of applying the Direct Rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs will be treated as Eligible Rollover Distributions in 2020.

8.5. County Authority. Notwithstanding any election by the Participant with respect to the time and form of distribution of his or her Account, the County may, in its discretion, at any time discharge in full its obligations under the Plan to any Participant by distributing to the Participant, or following the death of the Participant by distributing to his or her Beneficiary, the entire balance held in the Participant's Account.

8.6. Death of Participant. Upon the death of a Participant, any balance remaining in his or her Account will be paid to his or her Beneficiary (or Beneficiaries) in the time and manner stated in the Plan and the Participation Agreement or, if not stated in the Plan and Participation Agreement, in the time and manner determined by the Administrator.

8.7. Emergency Withdrawals. In cases of financial hardship resulting from unforeseeable emergency, a Participant may request withdrawal not exceeding an amount necessary to meet the financial emergency, regardless of whether payments have commenced under the preceding Sections of the Plan. An "unforeseeable emergency" means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to



casualty or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case. Examples of circumstances that are not considered to be unforeseeable emergencies include the need to send a Participant's child to college or the desire to purchase a home. However, in no event will payment be made to the extent that such hardship is or may be relieved:

- (a) through reimbursement or compensation by insurance or otherwise;
- (b) by liquidation of the Participant's other assets outside the Plan, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- (c) by cessation of deferrals under the Plan.

The Administrator will evaluate the request for emergency withdrawal for conformity with the above Plan provisions and with applicable tax laws. If the Administrator gives written approval to an emergency withdrawal, the Administrator will authorize a lump sum payment to the Participant limited to that amount necessary to meet the financial emergency, but not exceeding the amount held in the Participant's Account on the date of the payment, and the amount credited to the Participant's Account will be reduced by the amount of that withdrawal.

8.8. Voluntary In-Service Distribution. A Participant who is an Employee may elect to receive a distribution of his or her entire Account balance if all of the following requirements are met:

- (a) his or her total Account balance is \$5,000 or less (or, if greater, the dollar limit in effect under section 411(a)(11) of the Code), excluding rollover contributions;
- (b) the Participant has not previously received an in-service distribution (disregarding emergency withdrawals) of his or her Account balance; and
- (c) no Deferrals have been made with respect to the Participant during the two-year period ending on the date of the in-service distribution.

8.9. Loans.

- (a) In General. The Administrator may make loans available to an eligible

Participant who is an Employee from his or her Account in accordance with this section. The County will determine which Participants are eligible for such a loan.

- (b) Minimum Loan Amount. No loan may be made to any Participant from his or her Account unless the amount of the loan requested is equal to at least

\$1,000.00.

- (c) Maximum Loan Number and Amount. A Participant may not at any time have more than one outstanding loan under the Plan; a Participant who receives a loan from his or her Account may not receive another loan under the Plan until the outstanding loan is fully repaid. In addition, no loan may be made to any Participant from his or her Account to the extent that such loan, when added to the outstanding balance of all other loans to the Participant from all other section 457(b) plans and qualified plans maintained by the Employer or any Affiliate, exceeds the lesser of:

- (1) \$50,000, reduced by the excess, if any, of:

- (A) the highest outstanding balance of loans to the Participant from the Plan and all other section 457(b) plans and qualified plans maintained by the Employer or any Affiliate during the one-year period ending on the day before the date the loan is approved (not taking into account any payments made during such one-year period), over
- (B) the outstanding balance of loans from the Plan and all other section 457(b) plans and qualified retirement plans maintained by the Employer or any Affiliate to the Participant on the date the loan is made; or

- (2) 50% of the Participant's vested Account balance under the Plan and under all other section 457(b) plans and qualified plans

maintained by the Employer or any Affiliate as of the day immediately preceding the date on which such loan is approved.

(d) Evidence and Terms of the Loan. Any loan made to a Participant from his or her Account must be evidenced by a written promissory note, which promissory note must:

- (1) specify the amount of the loan, including interest, the date of the loan and the repayment schedule;
- (2) require level amortization with repayments, not less frequently than quarterly, over the term of the loan, except that the Administrator may, upon the receipt of a Participant's written election to do so, suspend the Participant's loan repayments for:
  - (A) a period, not to exceed one year, during which he or she is on a Bona Fide Unpaid Leave of Absence, but only if (i) the loan, including any accrued interest, must be repaid by the latest date permitted under section 8.9(d)(2), and (ii) the amount of the installments after the leave ends must not be less than the amount required under the terms of the original promissory note;
  - (B) all or any portion of a period during which he or she is on a leave of absence while performing service in the uniformed services (as defined in 29 U.S.C. chapter 43), but only if loan repayments must resume upon completion of such military service, and (ii) the loan, including any accrued interest, must be repaid in full by amortization in substantially level payments over a period that ends no later than the latest date permitted under section 8.9(d)(2);
  - (C) a period, not to exceed one year, for repayments

due from March 27, 2020, to December 31, 2020, if the Participant would be eligible for a Coronavirus-Related Distribution under (a), (b) or (c) of Section 8.10 and the Participant has an outstanding loan from the Plan on or after March 27, 2020. The Plan will adjust any subsequent repayments to reflect the extension of the due date and, notwithstanding section 8.9(d)(3), any interest accrued during the extension and will disregard the period of extension in determining the five (5) year period and loan term under Code section 72(p)(2)(B) or (C).

- (3) Require that the loan be repaid within five years from the date of the loan; and
  - (4) Provide for interest at a reasonable rate, as determined by the Administrator, commensurate with interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.
- (e) Security. Any loan to a Participant under the Plan must be secured by the pledge of the portion of the Participant's Account balance invested in such loan.
- (f) Default. In the event that a Participant fails to make a loan payment by the last business day of the calendar quarter following the calendar quarter in which the payment is due, a default on the loan will occur. In the event of such default:
- (1) All remaining payments on the loan will be immediately due and payable;
  - (2) The Participant will not be allowed to initiate another loan from the Plan until the defaulted amount is repaid;
  - (3) The Administrator will apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan

upon his or her Severance From Employment;

- (4) If the Participant defaults before his or her Severance From Employment, the outstanding loan balance, including any accrued interest, will be reported on an IRS Form 1099-R as a deemed distribution.
- (5) Notwithstanding anything elsewhere in this Section to the contrary, in the event a loan is outstanding on the date of a Participant's death, his or her estate will be his or her beneficiary as to the portion of the interest in the Plan invested in such loan (with the beneficiary or beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

(g) Repayment.

- (1) The Participant will be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the County to make payroll deductions from the Participant's compensation as long as the Participant has an outstanding loan or as long as the Participant is an employee (with an outstanding loan) and to transfer such payroll deduction amount to the loan administrator in payment of such loan plus interest. Repayments of a loan will be made by payroll deduction of equal amounts (comprised of both principal and interest) from the paycheck on or about the tenth of each month, with the first such deduction to be made as prescribed by the loan agreement.
- (2) Notwithstanding paragraph (1) of this subsection, a Participant may prepay the entire outstanding balance of the loan at any time, provided that the prepayment shall not change the payment schedule or the interest rate on the loan.
- (3) If any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence and the loan

suspension provision is not in effect or the Participant's must pay directly to the loan administrator the full amount that would have been deducted from the Participant's paycheck, with such payment to be made by the last business day of the calendar month in which the amount would have been deducted.

- (h) Severance From Employment. In the event a Participant has a Severance From Employment, the outstanding balance of any loan will be due and payable no later than the last day of the month in which the Participant receives their final compensation from the County. For the purpose of this paragraph, "final compensation" includes any payments for unused accrued leaves for which the Participant may be eligible.
- (i) Loan fees. A loan initiation fee and a regularly scheduled loan maintenance fee may, with the Administrator's approval, be deducted from the Participant's Account or, alternatively, from the Participant's paycheck by County Auditor-Controller's Office.
- (j) Loan Procedures. The Administrator may establish such rules and procedures with respect to the loan program as the Administrator deems advisable, which procedures may include, but are not necessarily limited to:
  - (1) The identity of the person or positions authorized to administer the loan program;
  - (2) A procedure for applying for loans;
  - (3) The basis on which loans will be approved or denied;
  - (4) The limitations, if any, on the types and amount of loans offered;
  - (5) The procedure under the program for determining a reasonable rate of interest; and
  - (6) The events constituting default and the steps that will be taken by the Plan Administrator in the event of such default.

(k) Definitions.

- (1) "Affiliate" means a member of a controlled group of corporations (as defined in Code section 414(b)), a group of commonly controlled trade or business (as defined in Code section 414(c)), or an affiliated service group (as defined in Code section 414(m)) of which the Employer is a member, and any other entity required to be aggregated with the Employer pursuant to Code section 414(0).
- (2) "Bona Fide Unpaid Leave of Absence" means that the borrower has completed Contra Costa County Form AK-14, it has been completed by the Participant's Department Head, approved by the Director of Human Resources and filed with the Human Resources Department Personnel Services Unit. A bona fide leave of absence shall be only for the time as documented on the Contra Costa County form AK-14 and cannot exceed one year.

8.10. Coronavirus-Related Distribution.

- (a) Distribution Requirements. Subject to the provisions of this section, a Qualified Individual may, at the time and in the manner prescribed by the Plan Administrator, elect to receive a Coronavirus-Related Distribution from his or her Account. To qualify as a Coronavirus-Related Distribution: (1) the distribution must be made on or after January 1, 2020, and before December 30, 2020, and (2) the Qualified Individual must certify in accordance with subsection (c) of this section that the distribution, when added to all of his or her prior Coronavirus-Related Distributions under all IRAs or other eligible retirement plans, does not exceed \$50,000.
- (b) Qualified Individual. For purposes of this section, "Qualified Individual" means a Participant, a Beneficiary of a Participant who died before distribution of his or her entire Account, or an Alternate Payee:
  - (1) Who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the Centers for Disease Control and Prevention, including a test

authorized under the Federal Food, Drug, and Cosmetic Act (“Approved Test”);

- (2) Whose spouse or dependent (as defined in Code section 152) is diagnosed with COVID-19 by an Approved Test, or
- (3) Who experiences adverse financial consequences as a result of:
  - (A) The individual, his or her spouse or someone who shares the individual’s principal residence (i) being quarantined, furloughed, laid off, or having his or her work hours reduced due to COVID-19; (ii) being unable to work due to lack of child care as a result of COVID-19; or (iii) having a reduction in pay (or self-employment income), or having a job offer rescinded or job start date delayed due to COVID-19; or
  - (B) The closing or reduction in hours of a business owned or operated by the individual, his or her spouse or someone who shares the individual’s principal residence due to COVID-19.

(c) Certification Required. The Qualified Individual must, before receiving a Coronavirus-Related Distribution, provide a completed self-certification to the Plan Administrator to certify that he or she satisfies at least one of the conditions specified in the preceding subsection, and that the requested distribution amount does not exceed the distribution limit specified in subsection (a) of this section. The Plan Administrator may rely on the Qualified Individual’s certification that the conditions described in the preceding sentence have been met; provided, however, that in no event will the amount of the Coronavirus-Related Distribution under this section, when added to all of the Qualified Individual’s prior Coronavirus-Related Distributions under all retirement plans of the Employer, exceed \$50,000.

(d) Treatment of Distribution. Notwithstanding Section 10.1(a), a



Coronavirus-Related Distribution under this section will not be treated as an Eligible Rollover Distribution for purposes of Section 10.1, and the rules under sections 401(a)(31), 402(f), and 3405 of the Code will not apply to a Coronavirus-Related Distribution under this section.

- (e) Recontribution. The Qualified Individual may, at any time during the 3-year period beginning on the day after the day the Coronavirus-Related Distribution was received, recontribute all or part of that distribution, but not an amount in excess of the amount of that distribution, to the Plan, provided the distribution would, but for the preceding subsection, have qualified as an Eligible Rollover Distribution under Section 10.1(a). In that case, the recontributed amount will be treated as a Rollover Contribution.

The Plan Administrator must approve recontribution of a Coronavirus-Related Distribution before the Plan will accept it. The Plan Administrator will approve recontribution of a Coronavirus-Related Distribution only if it reasonably concludes the recontribution is eligible for direct rollover treatment under section 2202(a)(3) of the CARES Act. In making that determination, the Plan Administrator may rely on the recontributing individual's certification that he or she satisfies the conditions to be a Qualified Individual, unless the Plan Administrator has actual knowledge to the contrary.

If the Plan Administrator subsequently determines that the recontribution was not eligible for direct rollover treatment as described in the preceding paragraph, the Plan Administrator will distribute the invalid recontribution (adjusted for earnings) to the recontributing individual within a reasonable period of time after that determination.

8.11. Application for Benefits. The Administrator may require any Participant or Beneficiary to submit an application or claim for distribution to the County in form satisfactory to the County, before the commencement of any payments to any such person.

## **SECTION 9. ADMINISTRATION**

- (a) The Administrator has plenary authority to administer the Plan.
- (b) The Administrator has full power and the sole discretion to construe the

Plan and to determine all questions that may arise under the Plan relating to (a) the eligibility of individuals to participate in the Plan; (b) the amount of benefits to which any Participant or Beneficiary may become entitled; and (c) any other issues that may arise under the Plan. All decisions made, and actions taken, by the Administrator under the Plan will be final, conclusive and binding on all persons having or claiming any interest under the Plan.

- (c) The Administrator will establish rules and procedures to be followed by the Participants in filing applications for benefits and for furnishing and verifying proofs necessary to establish age, service and any other matters required in order to establish their rights to benefits in accordance with the Plan.
- (d) All elections, requests; designations and claims that are filed with the Administrator under this Plan (including but not limited to Participation Agreements, investment fund elections, Beneficiary designations, distribution elections and requests, and benefit claims) will be in writing and made in the form and manner, and filed at the time and in the manner required by the Administrator.
- (e) The Administrator may employ counsel, accountants, and other agents as it deems appropriate.
- (f) If the Administrator is an officer or employee of the County, the County will indemnify the Administrator to the maximum extent allowed by law against any and all claims, loss, damage, expense and liability arising from any act or failure to act relating to the Administrator's duties and powers unless the same is determined by a court of competent jurisdiction to be solely the result of the Administrator's gross negligence or willful misconduct.

## **SECTION 10. DIRECT ROLLOVERS AND PLAN-TO-PLAN TRANSFERS**

10.1. Definitions. The following definitions apply to the terms used in this Section 10:

- (a) "Eligible Rollover Distribution" means an "eligible rollover distribution"

within the meaning of section 402(c)(4) of the Code.

(b) “Eligible Retirement Plan” means any of the following:

- (1) an eligible deferred compensation plan described in section 457(b) of the Code that is maintained by an eligible employer described in section 457(e)(1)(A) of the Code;
- (2) an individual retirement account described in section 408(a) of the Code;
- (3) an individual retirement annuity described in section 408(b) of the Code;
- (4) an annuity plan or contract described in section 403(a) or 403(b) of the Code, respectively; or
- (5) a qualified trust described in section 401(a) of the Code.

(c) “Distributee” means a person who is entitled to receive an Eligible Rollover Distributions, and who is any of the following:

- (1) an Employee or former Employee;
- (2) an Employee’s or former Employee’s surviving spouse; or
- (3) an Employee’s or former Employee’s spouse or former spouse, if the spouse or former spouse is the current or former Employee’s alternate payee under a qualified domestic relations order within the meaning of section 414(p) of the Code.
- (4) Effective for Plan Years beginning on or after January 1, 2010, Distributee also includes a Participant’s non-spouse designated Beneficiary (as defined in Code section 401(a)(9)(E)). In the case of a non-spouse designated Beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in section 408(a) or 408(b) of the Code (“IRA”) that is established on behalf of the designated Beneficiary and that will be treated as

an inherited IRA pursuant to the provisions of section 402(c)(11) of the Code. Also, in this case, the determination of any required minimum distribution under section 401(a)(9) of the Code that is ineligible for rollover will be made in accordance with Notice 2007 7, Q&A-17 and 18, 2007 5 I.R.B. 395 (or its successor).

- (d) “Direct Rollover” means a transfer of a Distributee’s Eligible Rollover Distribution from an Eligible Retirement Plan to another Eligible Retirement Plan.

10.2. Direct Rollovers from the Plan. A Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution transferred in a Direct Rollover from this Plan to another Eligible Retirement Plan specified by the Distributee.

10.3. Effect of Rollover from the Plan. A Direct Rollover of a Participant’s interest to another Eligible Retirement Plan terminates all rights of the Participant and his or her Beneficiary under this Plan with respect to the amounts rolled over.

10.4. Direct Rollovers to the Plan.

- (a) The Plan will accept as a rollover contribution to this Plan the Direct Rollover of pre-tax amounts from other Eligible Retirement Plans, subject to the terms and conditions of this Plan, upon the execution of a Participation Agreement by the Participant and provision of documentation satisfactory to the Administrator confirming that the transferor plan is an Eligible Retirement Plan, and that such rollovers are permitted under the transferor plan.
- (b) No after tax contributions from another Eligible Retirement Plan may be rolled over to this Plan.
- (c) A rollover contribution will be deposited in the trust maintained under the Plan and credited to the Participant’s Account. Rollover contributions will be separately accounted for in a subaccount of the Participant’s Account.
- (d) Only Participants who are Employees may rollover amounts to this Plan.

- (e) The Plan may refuse to accept rollover contributions that are not in cash.
- (f) If a rollover contribution is later determined to be ineligible for rollover, the Administrator will direct that any ineligible amount (adjusted for allocable earnings or losses) be distributed from the Plan as soon as administratively feasible.

10.5. Plan-to-Plan Transfers. A Participant may direct that some or all of the balance in his or her Account be directly transferred by the County from the Plan to:

- (a) a defined benefit plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, if such transfer is for the purchase of permissive service credit under such other plan, or
- (b) another governmental plan maintained by a State or local government employer within the State of California, if such transfer is for the repayment of contributions (including interest thereon) to such plan with respect to an amount previously refunded to such individual upon a forfeiture of service credit under such other plan.

## **SECTION 11. MISCELLANEOUS**

11.1. Non-Alienation of Benefits. No Participant or Beneficiary may sell, transfer, assign, hypothecate, or otherwise dispose of all or any part of his or her rights under the Plan, and any attempt to do so will be void.

11.2. Qualified Domestic Relations Orders.

- (a) Notwithstanding Section 11.1, payment will be made in accordance with the provisions of any judgment, decree, or order that:
  - (1) creates for, or assigns to, a spouse, former spouse, child, or other dependent of a Participant the right to receive all or a portion of the Participant's benefits under the Plan for the purpose of providing child support, alimony payments, or marital property rights to that spouse, child, or dependent;

- (2) is made under a State domestic relations law;
  - (3) does not require the Plan to provide any type of benefit, or any option, not otherwise provided under the Plan; and
  - (4) otherwise meets the requirements to be a “qualified domestic relations order” (“QDRO”) within the meaning of section 414(p) of the Code, as determined by the Administrator.
- (b) If the amount payable to the alternate payee under the QDRO is \$5,000 or less, that amount will be paid in one lump sum as soon as practicable following the Administrator’s determination that the order is a QDRO.
  - (c) If the amount payable the alternate payee under the QDRO exceeds \$5,000, it may be paid as soon as practicable following the Administrator’s determination that the order is a QDRO, but only if the QDRO so provides and the alternate payee consents. Otherwise, such amount is payable only upon the earliest of:
    - (1) the Participant’s Severance From Employment,
    - (2) the time such amount could be withdrawn under Section 8, or
    - (3) the Participant’s attainment of age 50.

11.3. Amendment or Termination. This Plan may be amended or terminated by the County at any time by resolution of the Board of Supervisors of the County. No amendment or termination of the Plan will reduce or impair the rights of any Participant (or Beneficiary or alternate payee) with respect to amounts credited to his or her Account. Upon termination of the Plan, all Account balances remaining under the Plan will be distributed as soon as administratively practicable, in the manner determined by the Administrator in its sole discretion.

11.4. No Right to Employment. This Plan does not give any Participant any right to continue his or her employment or service with the Employer or any other right or cause of action in law or equity against the Employer, except as expressly provided in the Plan.

11.5. Successors and Assigns. The Plan is binding upon and inures to the benefit of the County, its successors and assigns, all Participants and Beneficiaries and their heirs,

successors and legal representatives.

11.6. Tax Deductions. Deductions for Employee contributions to retirement associations and for Federal Insurance Contribution Act (Social Security) purposes shall be made without reference to Compensation deferred under this Plan. Salary serving as basis for computation of retirement benefits shall be that salary due the Employee before deduction of any deferred Compensation, as determined by the County Employees Retirement Law of 1937, as amended.

11.7. Notices. Any notice or other communication required or permitted under the Plan will be in writing, and if directed to the County must be filed at time and in manner required by the Administrator and, if directed to a Participant or to a Beneficiary, must be mailed first class to that Participant or Beneficiary at his or her last known address as it appears on the records of the County Director of Human Resources.

11.8. No Warranty. The County does not warrant any tax benefit or any financial benefit under the Plan, or the financial soundness of any investment available under the Plan. Without limiting the foregoing, the Employer and its officers, Employees and agents will be held harmless by the Participant and any Beneficiary from, and will not be subject to any liability on account of, the Federal or State tax consequences, or any other consequences of any determination as to the amount of Compensation to be deferred, the method by which distributions under the Plan are paid, the persons to whom such distributions are paid, the amount of distributions paid, or the commencement or termination of distribution.

11.9. Hold Harmless. The County, its officers, Employees, and agents will be held harmless by the Participant and any Beneficiary from, and will not be subject to, any liability, for all acts performed in good faith with respect to the Plan.

11.10. Governing Law. The Plan and any Participation Agreement are entered into in the County of Contra Costa and are governed by the laws of the State of California.

11.11. Amendment to Comply with Legal Requirements. This Plan is intended to comply, and will be construed in accordance with section 457(b) of the Code. The County has the right to amend the Plan to the extent that may be desirable or necessary to conform the Plan to the requirements of section 457(b) of the Code and any other applicable law, regulation or ruling, including amendments that are retroactive to the effective date of the authorized change.