

**EL DORADO COUNTY  
DEFERRED COMPENSATION PLAN  
(26 U.S.C. SECTION 457)**

The purpose of this Plan is to provide deferred compensation for El Dorado County employees that elect to participate in the Plan. This Plan is established pursuant to section 53212, et seq. of the Government Code of the State of California and is intended to constitute an "eligible deferred compensation plan" within the meaning of section 457 of the Federal Internal Revenue Code.

The Employer hereby amends and restates the Employer's Deferred Compensation Plan EFFECTIVE \_\_\_\_\_, 2010. The name of this plan is the County of El Dorado Deferred Compensation Plan hereinafter referred to as the "Plan." This amendment and restatement of the Plan is effective \_\_\_\_\_, 2010, pursuant to PL 107-16 (HR1836) (June 7, 2001) the Economic Growth and Tax Relief Reconciliation Act of 2001 and as may be adopted by California Revenue Taxation Code 17024.5, as amended.

**Article 1- Definitions**

The following terms when used herein shall have the following meaning:

1.1 Account: The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred compensation credited to the Participant, including the Participant's Deferrals, the earnings or loss of the Fund (net of Fund expenses) allocable to the Participant, any Transfers for the Participant's benefit, and any distributions made to the Participant or the Participant's Beneficiary.

1.2 Administrator: The service provider or providers with whom the Employees contracts either investment, record keeping, or other management services for the Plan.

1.3 Beneficiary: The person or persons designated by the Participant to receive distributions from the Participant's Account after the Participant's death.

1.4 Board: The Board of Supervisors of El Dorado County.

1.5 Code: The Federal Internal Revenue Code of 1986, as amended from time to time, including but not limited to the Amendments under the Economic Growth and Tax Reconciliation Act of 2001 which are referenced above. Unless otherwise stated all referenced sections in this Plan pertain to the Federal Internal Revenue Code.

1.6 Deferral: An amount credited to a Participant's Account by reason of the Participant's agreement to defer a portion of his or her salary or wages.

1.7 Deferral Agreement: The agreement between an Employer and an Employee, including any amendments thereto, which specifies the amount of Deferrals to be made by the Employee.

<C:\Users\jmitrisin\AppData\Roaming\L5\Temp\8c54dbbd-861b-4e9b-9363-4562a6a371f3.doc1\Deferred-Compensation\County\Changes-in-Process\Changes-12.04.20\Deferred-Compensation-Agreement-with-changes-09.08.11.doc1\Deferred-Compensation\County\Deferred-Compensation-Agreement-with-changes-09.08.11.doc>

Each Deferral Agreement or amendment thereto shall be made or confirmed in writing under procedures established by the Board.

1.8 Eligible Deferred Compensation Plan: A plan maintained by any employer that constitutes an "eligible deferred compensation plan" within the meaning of section 457 of the Code and that has at all relevant times included the deferral limitations set forth in section 457(b).

1.9 Employee: Any individual who is a common law employee of an Employer or for whom the Board is otherwise authorized to administer this Plan under the Government code.

1.10 Employer: The County of El Dorado.

1.11 Fund: The Deferred Compensation Fund that has been established as part of the Plan.

1.12 Government Code: Those statutes of the State of California that have been codified as the Government Code.

1.13 Includible Compensation: A Participant's compensation with respect to taxable year's means compensation as defined in Section 415(c)(3) [and any implementing federal regulations and federal code provisions](#) for services performed for the Employer. The amount of includible compensation is determined without regard to any community property laws.

1.14 Investment Option: One of the available alternatives for crediting investment earnings to a Participant's Account, which shall be based upon the performance of one or a combination of the investment portfolios maintained under the Fund.

1.15 Normal Retirement Age: Any age that is on or after the earlier of age 65 or the year at which the participants have the right to under the California Employees Retirement system immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age and that is not later than age 70½. A participant under this plan may designate his or her normal retirement age within these ages. A participant who is a qualified peace officer or fire fighter as defined under Section 415(b)(2)(H)ii(1) of the Code may declare a normal retirement age that is between age 40 and age 70½.

1.16 Participant: Any Employee or former Employee for whom a Deferral has been credited under the Plan and for whom an Account is maintained.

1.17 Plan: This Plan document.

1.18 Required Beginning Date: April 1<sup>st</sup> of the Year following the Year of a Participant's attainment of age 70½ or Separation from Service, whichever is later.

1.19 Separation from Service: The cessation of an Employee's active employment with an Employer. The standards applicable under section 401(d)(4)(A)(iii) of the Code shall apply in

determining whether a Participant has had a Separation from Service with the Employer. An Employee's rights upon Separation from Service with an Employer shall be unaffected by whether the Employee thereafter becomes an Employee of another Employer that has adopted this Plan.

1.20 Transfer: An amount credited to a Participant's Account by reason of a transfer from another Eligible Deferred Compensation Plan.

1.21 Year: A calendar year.

1.22 Eligible Rollover Account: The separate account maintained in accordance with Article 6 for a participant for amounts of Eligible Rollover Distributions.

1.23 Eligible Rollover Distributions: An eligible rollover distribution as defined in section 402 (c)(4) including Eligible Rollover Distributions to a surviving spouse as defined in 402 (c)(9).

1.24 Eligible Retirement Plan: An Eligible Retirement Plan as defined in section 402(c)(8)(B).

## **Article 2 - Employee Participation**

2.1 Eligibility: All eligible Employees of El Dorado County shall be eligible to participate in the Plan.

2.2 Initial Enrollment: In order to become a Participant, an Employee must enter into a Deferral Agreement, which shall become effective no earlier than the calendar month following the month in which the agreement is made. A Deferral Agreement will be given effect only if the Deferral amount elected therein satisfies whatever minimum the Board may establish, and the Employee provides all information called for on the agreement form.

2.3 Effect of Deferral Agreement: Commencing with the effective date of an Employee's Deferral Agreement, his or her gross salary or wages shall be reduced by the Deferral amount specified in the Deferral Agreement. Deferrals shall continue to be made in such amount unless and until the Deferral Agreement is amended or the Employee has a Separation from Service with the Employer. If a participant separates service after the first of the month, then prior to separation a participant may elect prior to separation, and prior to the date vacation, sick, or back pay would be payable on separation, to include such vacation, sick, or back pay as part of his deferrals provided that pay would have otherwise have been payable before the employee has a severance from employment and provided such pay is subject to the maximum deferrals participant would otherwise be allowed under this Plan. Subject to the limitations of Article 3, Deferrals shall not be subject to Federal or California income tax withholding and shall not be reported as gross income on the Employee's annual wage statement (W-2).

2.4 Amendment of Deferral Agreement: A Participant may amend or revoke his or her Deferral Agreement at any time, provided, however, that no change in the amount of a Participant's

Deferrals will become effective until the calendar month following the month in which the Deferral Agreement is amended.

2.5 Investment Options: Upon enrollment, the Participant shall designate the Investment Option or Investment Options to which his or her Deferrals are to be allocated. A Participant may thereafter re-allocate his or her Account balance among the available Investment Options. The minimum amounts or percentages that may be allocated among Investment Options, and the timing and frequency of re-allocations, shall be subject to such limitations and procedures as the Board may from time to time establish.

2.6 Beneficiary Designation: Upon enrollment, the Participant shall designate a Beneficiary to receive distributions from the Participant's Account in the event of the Participant's death. A Participant may change his or her designated Beneficiary at any time, provided that an amended Beneficiary designation shall be given effect only if it is signed by the Participant and delivered to a Plan representative (or post-marked for deliver) prior to the Participant's death. A Participant may designate any person or persons as Beneficiaries. Unless otherwise provided in the Beneficiary designation form, each designated Beneficiary shall be entitled to equal shares of the benefits payable after the Participant's death. If the Participant fails to designate a Beneficiary, or if no designated Beneficiary survives the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. Notwithstanding the foregoing, a Participant's Beneficiary designation shall not be given effect, and shall be overridden to the extent that such a designation would impair the rights of ~~any~~ a surviving spouse under applicable law.

**In addition, and notwithstanding the foregoing, the beneficiary designation shall be revoked by the administrative services provider if it has been provided reasonable notice thereof, of a divorce decree, or decree of legal separation or other decree of such separation or dissolution pertaining to such beneficiary unless the decree provides otherwise. The foregoing revocation provision applies only with respect to a Participant whose divorce or legal separation becomes effective on or following the date the Employer executes the Plan.**

2.7 Additional Deferrals: An Employer may make additional Fund investments with respect to any Employee, resulting in additional credits to the Account of such Employee. Any such additional credits shall be treated as Deferrals for all purposes of the Plan. The Employer shall notify the Board of any such additional Deferrals, and each Employee for whom such Deferrals are to be made must complete a Deferral Agreement, regardless of whether elective Deferrals are to be made by such Employee.

### Article 3 - Deferral Limits

3.1 Deferral of Compensation: During each Employment Period in which an 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 Participant in the Participation Agreement which the Participant has executed and filed with the Employer. Deferral compensation may include accumulated sick, vacation and or back pay provided the deferral of such pay (subject to the limitations in section 3.2 below) may be deferred for any calendar month only if an

C:\Users\Jmitrisin\AppData\Roaming\L5\Temp\8c54dbbd-861b-4e9b-9363-4562a6a371f3.doc1\Deferred - Compensation\County\Changes - in Process\Changes - 12.04.20\Deferred - Compensation - Agreement - with - changes - 09.08.11.doc1\Deferred - Compensation\County\Deferred Compensation Agreement with changes-09.08.11.doc

agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available to the participant. Deferrals attributable to accumulated sick pay, accumulated vacation pay and back pay may be made for a former Employee with respect to compensation described in 1.415(c)-2(e)(e)(ii) of the Internal Revenue Regulations (relating to compensation paid within 2 ½ months following severance from employment); compensation described in section 1.415(c)-2(g)(4) of the Internal Revenue Internal Revenue Regulations (relating to compensation pertaining to participants who are permanently and totally disabled) and compensation relating to qualified military service under section 414(h) of the Code. The interpretation of the foregoing provision shall be governed by the provisions of Internal Revenue Regulation section 1.457-4.

3.2 Limitation: 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) below, the maximum amount that a Participant may defer during an Employment Period shall not exceed the lesser of (i) the maximum dollar amount under section 457(b)(2)(A) as adjusted for cost of living adjustments described in section 457(e)(15) or (ii) 100% of the Participant's Includible Compensation as provided in section 457(b)(2)(B). The minimum amount that a participant may defer is \$10.00 per pay period. If a participant defers an amount greater than the Calendar Year Maximum stated in this paragraph 3.2(a), or as allowed by the Code, the excess deferrals will be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Plan determines the amount is an excess deferral.

(b) +50 Catch-up Deferrals: The maximum deferral amount described in Paragraph (a) above and contributed under the Plan is increased for a Participant who has attained age 50 (or older) by the end of each Employment Period. The additional amount permitted to be contributed under this Paragraph is the lesser of (i) the applicable dollar amount set forth in section 414(v)(2)(B) or (ii) the Participant's Compensation for the taxable year reduced by any other elective deferrals of the Participant for the taxable year. This Paragraph shall NOT be applicable for any taxable year in which Paragraph (c) below applies.

(c) Traditional Catch-Up Deferrals: 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 shall be the lesser of (i) twice the maximum deferral amount in effect under section 457(b)(2)(A) or (ii) the limitation established for the taxable year under Paragraph (a) above, plus the limitation established for the taxable year under Paragraph (a) for each of the prior taxable years beginning after December 31, 1982, during which the Participant was eligible to participate less the amount of Compensation deferred by or on behalf of the Participant under the Plan for each of such prior taxable years. For years prior to 1982 eligible participants who did not use or under used catch up deferrals are subject to the coordination limitation as to those years if they were IRS 457 plans and plans subject to IRC 402(g).

(d) Other Plans: Notwithstanding any provision of the Plan to the contrary, the amount excludable from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.

(e) If a participant defers an amount greater than the Calendar Year Maximum stated in this paragraph 3.2(a), or as allowed by the Code, the excess deferrals will be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Plan determines the amount is an excess deferral.

3.3 USERRA: Notwithstanding the preceding provisions of this section, a Participant who is entitled to reemployment pursuant to the terms of the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") may defer an additional amount under the Plan as provided for in that Act for the years of his or her service in the uniformed services (as defined by USERRA). Any such deferral will not be subject to the limits for the Employment Period to which such deferrals relate. Additionally, under the Heroes Earnings Assistance and Tax Relief Act, eligible 2008 participants on military leave may defer differential pay as defined under the Act. An eligible participant may also withdraw contributions to the Plan without penalty.

3.4 Treatment of Excess Deferrals: To the extent any contributions made to the Plan constitute excess deferrals, not otherwise allowable, such deferrals when detected shall be distributed to the participant and for deferral purposes taxed in the year such deferrals were contributed to the plan, and the earnings taxed on such excess deferrals in the year distributed. Excess deferrals shall be reported on IRS Form 1099-R.

#### **Article 4 - Participant Accounts**

4.1 Crediting of Accounts: All Deferrals and Transfers with respect to a Participant shall be credited to the Participant's Account as of the date such amounts are invested in the Fund in accordance with the procedures established by the Board. The Employer shall cause all Deferrals and Transfers to be invested in the Fund as soon as practicable after such amounts are withheld from the Participant's salary or wages or are available from the transferor plan, as applicable.

4.2 Account Balances: The value, or balance, of each Participant's Account shall equal the aggregate value of the Fund investments held with respect to the Participant, based on the Investment Options selected by the Participant, and the method of valuation established by the Board. Each Participant shall periodically receive a statement which shows his or her Account balance and summarizes any credits or other transactions since the preceding statement. In the event that an individual has participated in this Plan by reason of employment with two or more Employers, separate Accounts shall be maintained for such individual with respect to each employment relationship.

#### **Article 5 - Distribution of Benefits**

5.1 General Provisions: Except for Emergency Withdrawals under section 5.3 and De Minimis Distributions under section 5.7, or as otherwise specifically allowed by the Plan, distributions from the Plan may not be made to a Participant earlier than (i) the calendar year in which the

Participant attains age 70½; or (ii) the calendar year in which there is a Severance from Employment by the Participant. All irrevocable elections to a Benefit Commencement Date by Participants or Beneficiaries made prior to January 1, 2002 are no longer irrevocable.

5.2 Mode of Payment: Benefits shall be paid in accordance with the payment option elected by the Participant. Payment amount, method of payment, and settlement options are available as provided by each of the available investment options, subject to section 5.5. The Participant shall elect the mode of payment based upon options then available. All payment options shall be subject to subsection 5.5. A Participant who has chosen a payment option, other than a purchased annuity payment option at discretion of county, shall have the ability to change his payment option one (1) time each calendar quarter at no cost. Additional changes may be subject to an administrative charge in an amount determined by the Employer and Administrator.

5.3 Emergency Withdrawals: except as otherwise provided in subsection 5.5, distributions to or on behalf of a Participant shall be made only in the event of his separation from service with the Employer, unless such Participant or his beneficiary experience an unforeseeable emergency. "Unforeseeable emergency" means a severe hardship to the Participant or his beneficiary resulting from an illness or accident of the Participant or beneficiary, the Participant's or beneficiary's spouse or beneficiary's dependent (as defined in Section 152(a) of the Code) loss of the participant's or beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. For example, the imminent foreclosure of or eviction from the participant's or beneficiary's residence may constitute an unforeseeable emergency. In addition the need to pay for medical expenses including non-refundable deductibles, as well as for the cost of prescription drug medication may constitute an unforeseeable emergency. Finally the need to pay for the funeral expenses of a family member may also constitute an unforeseeable emergency. Except in extraordinary circumstances, the purchase of home and the payment of college tuition are not unforeseeable under this paragraph. Other examples of events which may cause an unforeseeable emergency are catastrophic illness, fire, flood, earthquake, or any legislation recognizing an emergency or catastrophic event in a designated area affecting the beneficiary of the plan, death in the family, or disabling injury. Withdrawals will not be permitted for expenditures normally budgetable, such as down payment on a home, purchase of an automobile, or education expenses. Withdrawals 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 is subject to the discretion of the Employer or its appointed third party administrator to determine if shall be permitted, in the discretion of the Employer, only to the extent it complies with the requirements of this subsection 5.3. The Employer authorizes its third party administrators to determine on its behalf whether these unforeseeable emergency requirements are met. 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 Employer or its third party

~~C:\Users\Jmitrisin\AppData\Roaming\LS\Temp\8c54dbbd-861b-4e9b-9363-4562a6a371f3.doc1\Deferred - Compensation\County\Changes - in Process\Changes - 12.04.20\Deferred - Compensation - Agreement - with - changes - 09.08.11.doc1\Deferred - Compensation\County\Deferred Compensation Agreement with changes-09.08.11.doc~~

administrator. For purposes of eligibility under this section a family member shall be defined to include a spouse or dependent as defined in IRC section 152(a).

5.4 Payments on the Death of a Participant: If the Participant dies before the benefits to which he is entitled under this Plan have been paid or exhausted, then the remaining benefits payable under the Plan shall be paid to his designated Beneficiary. The Beneficiary shall have the right to elect the time and mode of payment of such benefits, subject to limitations set forth in this Plan. Such election as to the time of payment (distribution commencement date) shall be filed by the Beneficiary no later than ninety (90) days following the Participant's death. Failure to make such an election as to the form of payment may result in the Administrator making a lump sum payment to the Beneficiary.

(a) Death After Benefit Commencement: If the Participant dies after having begun to receive payments, payment of the remainder of such scheduled payments shall be suspended for a period of sixty days after the Participant's death. During each sixty-day suspension period, the Beneficiary of such Participant may elect, subject to the distribution requirements of subsection 5.5, to receive the balance then credited to the Participant's Account in a single lump sum or in another method of distribution, 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-day suspension period, the remaining installment payments selected by the Participant (adjusted, if necessary, to comply with the distribution requirements of subsection 5.5) shall be paid to the Beneficiary.

(b) Death Prior to Benefit Commencement: If the Participant dies before payments have begun, payments to a Beneficiary must comply with one of the following requirements, subject to the provisions of subsection 5.5:

(i) if the Participant has no Beneficiary, the entire account value will be distributed within five (5) years of the Participant's death; or

(ii) if the Beneficiary is not the Participant spouse, then distribution of the Account must begin on or before December 31 of the calendar year following the Participant's death, and the entire account must be paid over a period not extending beyond the life expectancy of the Beneficiary; or

(iii) if the Beneficiary is the Participant surviving spouse, distribution of the Account may be delayed until the December 31 of the calendar year in which the Participant would have attained age 70½.

5.5 Provisions Required Pursuant to Code Section 401(a)(9) and Implementing Treasury Regulations: The distribution provisions of this plan are in accordance with the requirements of Section 401(a)(9) of the Code, the incidental death benefit requirements of Section 401(a)(G) of the Code; Sections 1.409(a)(9)-2 through 1.401(a)(9)-9 of the treasury regulations implementing Section 401. The provisions of Section 401(a)(9), the treasury regulations, and any other provisions prescribed by the Commissioner in Revenue Ruling Notices and other guidance published in the Internal Revenue Ruling Notices shall override any distribution options in this plan which are inconsistent with said action, regulations, notices and other guidance published in the Internal Revenue Bulletin.

In accordance with Section 401(a)(9), distribution of the Participant's entire Account shall commence no later than April 1 following the calendar year in which he/she attained age 70½ or retires from service, whichever is later. If a participant attains the age of 70½ after June 30, then his or her required distribution date shall commence in the second calendar year immediately following the date of his death. Except as noted below, distributions shall be determined by the life expectancy and distribution period tables published by the Department of Treasury and where applicable Single Life and Uniform Lifetime Table. However, if the sole beneficiary is the participant's spouse and who is less than ten years younger than the participant then the distribution periods shall be determined by the Joint and Life Survivor Tables published by the Department of the Treasury and may be found under IRS regulation section 1-409(a)(9)-9. Any beneficiary who is deemed an incidental beneficiary shall under the provisions of Section 401(G) of the Code be treated as a plan designated beneficiary for purposes of determining the minimum distribution requirements under section 401(a)(9) and any optional provisions under this Plan.

5.6 Effect of Reemployment: If a Participant who separates from the service again becomes an Employee, no distribution shall be made or continued to the Participant while he/she is so employed. Any undistributed amounts for a two year period which the Participant was entitled to receive on his/her prior separation from service shall be held until the Participant or his/her Beneficiary is again entitled to a distribution under the terms of the Plan.

5.7 De Minimis Distributions: Notwithstanding any other provision of the Plan, if the Participant has not deferred any amount and the total amount for a two year period, and the total amount of the Participant's Account under the Plan does not exceed \$1000, a Participant may elect to receive, or the Plan may elect to distribute without the Participant's consent, the entire value of the Participant's Account in a lump sum distribution. No subsequent de minimis distribution under this provision to such Participant may be made, once such distribution occurs.

5.8 Non-assignability: The interest of the 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.

5.9 Annuities: In the event that a Participant or Beneficiary elects to receive distributions in the form of a life annuity or another annuity form that cannot be distributed from the Fund, the portion of the Participant's Account balance allocable to that form of distribution shall be distributed from the Fund and used to purchase a commercial annuity contract under which that form of annuity is provided. The amount of the annuity payments to the Participant or Beneficiary shall equal the amounts payable under such annuity contract. An annuity contract acquired in connection with an annuity form of distribution shall be held by the Employer for the exclusive benefit of the Participant or Beneficiary. The Employer shall have no beneficial ownership interest in such annuity contract. However, the Employer shall be solely responsible to assure that all benefit payments are made in accordance with the terms of the Plan, and that all tax withholding and reporting requirements are satisfied.

Formatted: Indent: Left: 0", First line: 0", Tab stops: 0", List tab + Not at 0.48"

5.10 Lost Participants: The Administrative Service Providers working with the Employer shall use all diligent and reasonable methods and procedures in attempting to locate a lost participant.

Formatted: Indent: Left: 0", First line: 0", Tab stops: 0", List tab + Not at 0.48"

Formatted: No underline

Formatted: Bullets and Numbering

5.11 Election to Deduct From Distribution by an Eligible Retired Public Safety Officer: For distributions in taxable years beginning after December 31, of the calendar year following the adoption of this provision, an Eligible Retired Public Safety Officer may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the eligible Retired Public Safety Officer otherwise would receive and include in income. The Plan will pay such deducted amounts directly to the provider as described in Section 5.11(a).

Formatted: Indent: Left: 0", First line: 0", Tab stops: 0", List tab + Not at 0.48"

Formatted: Bullets and Numbering

Formatted: No underline

(a) Direct Payment: The Plan will pay directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract the amounts the Eligible Retired Public Safety Officer has elected to have deducted from the distribution. Such amounts may not exceed the lesser of \$3,000.00 or the amount the Participant paid for within the taxable year for qualified health care premiums and which otherwise complies with Section 402(1) of the Internal Revenue Code.

Formatted: Underline

Formatted: Indent: First line: 0.42"

(b) Definitions:

Formatted: Underline

(i) An Eligible Retired Public Safety Officer is an individual who by reason of disability or attainment of normal retirement age has experienced a severance from employment as a Public Safety Officer with the employer. A Public Safety Officer has the same meaning as in Section 1204(9) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. & 3796(b)(9)(A)).

(ii) Qualified health insurance premiums are premiums for coverage for the Eligible Retired Public Safety Officer, his/her spouse and dependents by an accident or health plan or qualified long term insurance contract (as defined in Code Section 7702B(b)).

## Article 6 - Plan Transfers and Eligible Distribution Rollovers:

6.1 Outgoing Section 457 Plan to Plan transfers through Severance of Employment: If a Participant terminates employment with the Plan Sponsor and accepts employment with another employer which maintains an eligible deferred compensation plan (as defined in Section 457) and the new employer's plan accepts transfers, the Participant may transfer his account balance from the Plan to the plan maintained by the new employer. Such transfer is allowed provided the entire account balance is transferred to the other employer; the eligible plans do not have to be in the same state, and is allowed if the participant is employed by the transferee entity, or if the amount permitted to be transferred belongs to an eligible beneficiary who is employed by the transferee entity.

6.2 Outgoing Section 457 Plan to Plan Transfers While Employed: If the Employer or another eligible entity offers an eligible deferred compensation plan (as defined in IRC section 457) other than the Plan, and such other plan accepts transfers, the participant may transfer the account balance from the Plan to the other plan, provided the entire account balance and participant's plan assets are transferred, and the other Plan is an eligible plan within the State of California.

6.3 Incoming Section 457 Plan to Plan Transfers: Transfers from other eligible deferred compensation plans (as defined in section 457) including PST plans in an amount of \$5000 or more to the Plan will be accepted at the Participant's request if such transfer is allowed by the transferring entity, constitutes the entire balance and plan assets of the participant, and the participant is an employee or eligible beneficiary who is employed by the County of El Dorado. If such transfer is due to severance of employment from the transferring entity, then such transfer may be from any eligible entity located within any State of the United States. All such transfers shall be made to accounts currently offered under the Plan. Any such transferred amount shall not be subject to the contribution limitations of section 5.3, provided however, that the actual amount deferred during the Employment Period under both plans shall be taken into account in calculating the deferral limitation for that year. For purposes of determining the limitations set forth in section 5.3, years of eligibility to participate in the prior plan and deferrals under that plan shall be taken into account.

6.4 Outgoing Eligible Rollover Distributions: A Participant may elect at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Participant, provided the Participant presents to satisfaction of the Administrator a letter of acceptance or other written acknowledgment from the accepting plan that it is an Eligible Retirement Plan qualified to accept the Eligible Rollover Distributions. Subject to the requirements of the Internal Revenue Code and its implementing regulations a participant may apply to the employer and its third party administrator in the manner prescribed by the employer and its administrators, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Participant provided the Participant provides to the satisfaction of the Administrator and its appointed third party administrators the following:

(a) A letter of acceptance or other written acknowledgment from the accepting plan that is an Eligible Retirement Plan qualified to accept the Eligible roll over Distributions.

(b) A determination by the Plan's Third Party Administrators that the requested roll over meets the requirements of the Internal Revenue Code and implementing regulations.

Formatted: Indent: First line: 0.42", Tab stops: 0.58", Left + 1", Left

6.5 Purchase of Service Credits: At anytime, a Participant may use all or a portion of an account balance as a direct trustee-to-trustee transfer to a Retirement System to purchase permissive service credit or the repayment of service credits, provided that (a) the Retirement System permits such a transfer, and (b) the Participant demonstrates to the Administrator's satisfaction that the transfer to a defined benefit governmental plan (as defined in section 414(d)) and the transfer is permissible for the purchase of service credit (as defined in Code Section 415(n)(3)(A)) or for the repayment of service credits permissible by section 415(k)(3). Such transfer may also be made to an eligible entity located within the State of California, or located in any state of the United States outside of the State of California. The limitations set forth in section 415(n) of the IRC shall not apply to the transfer provided the actuarial value of the defined benefit increase under the eligible retirement system does not exceed the amount transferred.

6.6 Transfer Conditions: The Board reserves the right to limit the terms and conditions under which Transfers will be accepted from or made to other Eligible Deferred Compensation Plans, including such terms and conditions as are necessary to comply with regulations or other

pronouncements under section 457 of the Code and to assure that any transferor or transferee plan constitutes an Eligible Deferred Compensation Plan.

## **Article 7 - Participant Rights**

7.1 Participant's Interest in the Fund: The Fund shall constitute a trust held for the exclusive benefit of Participants and Beneficiaries under the Plan. No part of the corpus or income of the Fund shall be used from, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries, and no Employer or creditor of an Employer shall have any interest in or claim against any part of the assets of the Fund.

7.2 Benefits Based on Account Balances: The benefits payable to each Participant (and his or her Beneficiary) shall be measured by and limited to the amounts properly credited to the Participant's Account. A Participant shall have no claim under the Plan for any loss or diminution of his or her Account balance that is attributable to any loss in the value of the investment portfolios of the Fund that correspond with the Investment Options selected by the Participant.

7.3 Nonassignability: Except as provided in Section 7.4, the rights of a Participant or Beneficiary under this Plan may not be sold, assigned, pledged, committed, transferred, or otherwise conveyed, and any attempt to assign or transfer rights or benefits under this Plan shall not be recognized. Except as otherwise required by law, the rights of a Participant or Beneficiary under this Plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the Participant or Beneficiary or otherwise.

7.4 Release from Liability to Participant: A Participant's right to receive benefits under the Plan shall be reduced to the extent that any portion of a Participant's Account has been paid or set aside for payment to a spouse, former spouse, or child pursuant to Section 7.4 or to the extent that the Employer or the Plan is otherwise subject to a binding judgment, decree, or order for the attachment, garnishment, or execution of any portion of the Participant's Account or of any distributions therefrom. The Participant shall be deemed to have released the Employer and the Plan from any claim with respect to such amounts in any case in which (i) the Employer, the Plan, or any Plan representative has been served with legal process or otherwise joined in a proceeding relating to such amounts, (ii) the Participant has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process or by mail from the Employer or a Plan representative to the Participant's last known mailing address, and (iii) the Participant fails to obtain an order of the court in the proceeding relieving the Employer and the Plan from the obligation to comply with the judgment, decree, or order.

7.5 Participation in Legal Proceedings: Neither the Employer nor any Plan representative shall be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of the Participant's Account or of any distribution therefrom. Notwithstanding the foregoing, if the Employer, the Plan, or a Plan

C:\Users\Jmitrisin\AppData\Roaming\L5\Temp\8c54dbbd-861b-4e9b-9363-4562a6a371f3.doc1\Deferred - Compensation\County\Changes - in Process\Changes - 12.04.20\Deferred - Compensation - Agreement - with - changes - 09.08.11.doc1\Deferred - Compensation\County\Deferred Compensation Agreement with changes-09.08.11.doc

representative is joined in any such proceeding, a Plan representative shall take such steps as it deems necessary and appropriate to protect the terms of the Plan.

#### **Article 8-Loans to Participants**

8.1 The County has elected to make loans available to participants under the provisions of Section 457 of the Code. The administration of the loans shall be made by those providers who by contraction with the County have agreed to the County's payroll and loan transfer procedures.

8.2 Any loan by the Plan to a Participant under the Article shall be subject to the loan administrative procedures established by the County with its providers.

8.3 The Provider contracting with the County is authorized to fix such other terms and conditions necessary to the administrative maintenance of the provisions of this Section and as necessary to comply with the provisions of the Code and its implementing regulations.

#### **Article 9 - Domestic Relations Order**

9.1 When the Employer, Plan, or Administrator receives a judgment, decree or order entered or enforceable pursuant to local domestic relations or marital property law ("domestic relations order"), and relating to the property rights of a Participant's present or former spouse ("Alternate Payee"), then:

(a) The Administrator shall promptly notify the Participant and Alternate Payee of the receipt of such order, and

(b) Within a reasonable time, the Administrator will follow the procedures adopted by the Employer to determine the validity of the domestic relations order as set forth in this section. In the event the Administrator believes, based on the application of the procedures, that the order is acceptable, it will forward the order to the Employer for approval. If the order does not appear to be acceptable, the Administrator will forward the order to the Employer for a final determination.

9.2 A valid domestic relations order must be a judgment, decree, order, or approval of marital property settlement made pursuant to a state domestic relations law (including community property law), relating to the property rights of the Alternate Payee. In addition, the domestic relations order must:

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

(b) Clearly specify the following information:

(i) The name and last known mailing address of the Participant and Alternate Payee covered by the domestic relations order;

(ii) The amount or percentage, or the manner in which the amount or percentage is to be determined, of the Participant's benefits to be paid to each Alternate Payee;

- (iii) The number of payments or period to which the order applies; and
  - (iv) The plan to which such order applies.
- (c) Provide a form of payment to the Alternate Payee that is permitted under the Plan; and
- (d) Not require the payment of benefits to an Alternate Payee which are required by a prior domestic relations order to be paid to another Alternate Payee.

9.3 Implementation of Valid Domestic Relations Order: When it has been determined that the valid domestic relations order applies to a Participant's Account, the Administrator shall comply with the domestic relations order. If the Order authorizes the Payee to retain his/her share of payment under the Plan and provided the participant is still a member of the plan, then the Administrator shall establish a separate Account for the Alternate Payee and transfer the assigned value or benefit determined under the terms of the domestic relations order, from the Participant's Account into the Alternate Payee's Account. If the Order authorizes an eligible rollover, then the Administrator under the terms of the Order shall within 30 days of written receipt of that Order provide for such rollover. If the Order authorizes the payee to take an immediate taxable distribution of his/her share of the account, then the Administrator shall within 30 days of written receipt of the Order provide distribution to the payee and issue a 1099-R indicating that receipt of the distributions shall be taxable to the payee.

9.4 Order Providing for Alternate Payee to Maintain an Account with the Plan: If the Order authorizes the Payee to retain her/her share of payment and a separate account is established under Section 9.3 then the Alternate Payee is not permitted to receive any type of distribution from his or her account until such time that the Participant is entitled to receive benefits from his or her Account. The Alternate Payee is permitted to designate beneficiaries for his or her Account and to exercise exchanges among the funding options as permitted by the Plan and the investment providers under the Plan.

9.5 If it is determined that a domestic relations order is valid under section 9.2 and the Participant has elected a date for commencement of distributions or has begun receiving payment under the Plan, the Alternate Payee must then elect a date to commence distributions not earlier than thirty (30) days nor later than sixty (60) days following the date the domestic relations order is determined to be valid. If a Participant is receiving non annuity payments under the Plan and the Administrator has been directed to enforce a valid domestic relations order, the Administrator shall satisfy such order to the extent possible based upon the remaining value or benefit in the Participant's Account.

## **Article 10 - Terms of Fund Investments**

10.1 Administration of Fund: The Board has the exclusive control of the administration and investment of the Fund. The Board may retain a bank or trust company to serve as a custodian for safekeeping, recordkeeping, delivery, securities valuation, investment performance reporting, or other services in connection with the investment of the Fund. In addition, the Board may retain one or more investment managers or investment advisors to manage or participate in the

management of the investment portfolios of the Fund. All expenses and fees incurred in the administration of the Fund shall be treated as Plan expenses under Section 11.3

10.2 Investment Options: The Board shall establish such Investment Options as it deems necessary to provide Participants with a diversified range of alternatives, including but not limited to Investment Options of the type described in section 21673 of the Government Code. Each Investment Option shall be based upon the investment performance of one or a combination of separate investment portfolios maintained under the Fund. The Board shall specify the investment objectives and characteristics of each Investment Option and the corresponding investment portfolio or portfolios and shall provide Employers and eligible Employees with a written description of each available Investment Option. The Board, in its sole discretion, may add, eliminate, or consolidate Investment Options and corresponding investment portfolios from time to time. In the event that an Investment Options is eliminated, the Board shall provide prior notice of such elimination, and if the Participants whose Accounts were wholly or partially allocated to that Investment Option do not make a re-allocation, the Board shall re-allocate such amounts to the available Investment Option or Investment Options that the Board in its sole discretion deems most comparable to the eliminated Investment Option.

10.3 Fund Investments: Subject to the limitations of applicable law and such further limitations as the Board may establish, each investment portfolio of the Fund may hold any form of investment that is consistent with its investment objectives. Without limiting the generality of the foregoing, the investment portfolios may hold equity or debt securities (other than securities issued by any Employer), fixed or variable annuity contracts (including deposit administration contracts) issued by life insurance companies, certificates of deposit or fixed rate investment contracts issued by a bank or similar institution, and such short-term instruments or deposits as the Board deems necessary to satisfy the liquidity needs of the Fund. In addition, each investment portfolio may hold shares, units, or participating interests in regulated investment companies, common or collective trust funds maintained by banks or similar institutions, investment partnerships, or other pooled investment funds or trusts that may issue participating interests in regulated investment companies, common or collective trust funds maintained by banks or similar institutions, investment partnerships, or other pooled investment funds or trusts that may issue participating interests to Eligible Deferred Compensation Plans.

10.4 Valuation and Accounting: Each investment portfolio of the Fund shall be valued at least monthly, and the value of each Participant's Account shall be determined by reference to the portion of the Participant's Account allocable to each investment portfolio. The valuation of each investment portfolio shall reflect income received and accrued, realized and unrealized gains and losses, and allocable Fund expenses. The value of each Participant's interest in an investment portfolio may be measured in units, shares, or dollars. In addition, the Board shall maintain records showing the value of the Fund investments allocable to all Participants (and deceased Participants) whose entitlement to benefits under the Plan is attributable to employment with each participating Employer.

10.5 Redemption Restrictions: No employer shall have any right to redeem, revoke, sell, or otherwise liquidate any contribution to or investment in the Fund, except as may be necessary to:

~~C:\Users\jmitrisin\AppData\Roaming\L5\Temp\8c54dbbd-861b-4e9b-9363-4562a6a371f3.doc1\Deferred Compensation\County\Changes in Process\Changes-12.04.20\Deferred Compensation Agreement with changes-09.08.11.doc1\Deferred Compensation\County\Deferred Compensation Agreement with changes-09.08.11.doc~~

- (a) effectuate a Participant's election to transfer all or a portion of his or her Account balance to another Eligible Deferred Compensation Plan;
- (b) effectuate the purchase of an annuity contract, as provided in Section 5.9 ; or
- (c) correct an investment in the Fund made by reason of a mistake of fact.

Nothing in paragraphs (a) through (c), above, shall give any Employer the right to redeem, revoke, sell, or otherwise liquidate any Fund investment, unless the Board or its designee has been provided with adequate evidence of the Employer's right to do so.

## **Article 11 - Administration of Plan**

11.1 Duties of Board: The administration of the Plan shall be under the exclusive control of the Board. The decisions of the Board shall be final, binding, and conclusive on all interested persons for all purposes. No member of the Board shall be entitled to act on or decide any matters relating solely to himself or herself or any of his or her rights or benefits under the Plan. To the maximum extent permitted by law, each member of the Board shall be held harmless for all acts performed in good faith in connection with the Plan.

11.2 Delegation of Authority: The Board may delegate to any individual, or any independent contractor the authority to act as the Board's agent with respect to any matter within the control of the Board, provided that any such delegation of authority shall be subject to revocation by the Board. Any act that the Board is required or authorized to perform under the terms of this Plan, including any communication to be made or received by the Board and the adoption of any supplementary guidelines or procedures, may be performed by an agent of the Board, provided such person is acting within the scope of that person's delegation of authority from the Board. To the maximum extent permitted by law, each employee of County shall be held harmless for any act performed in good faith in connection with the Plan. Any independent contractor who is retained to perform services under the Plan shall perform such services solely as the agent of the Board and shall not be liable to any Employer, Participant, or Beneficiary for any act performed (or not performed) hereunder.

11.3 Plan Expenses: The expenses of administering the Plan and Fund, including (i ) expenses incurred by the Board in the administration of the Plan and Fund, (ii) fees and expenses approved by the Board for investment advisory, custodial, recordkeeping, and other plan administration and communication services, and (iii) any other expenses or charges allocable to the Plan or the Fund that have been approved by the Board shall be charged to the Fund or, as appropriate, to a particular Investment Option or Investment Options under the Fund and shall be reflected in Participants' Account balances as provided in Section 4.2. Brokerage fees, transfer taxes, and any other costs incident to the purchase or sale by the Fund of securities or other investments shall be deemed to be part of the cost of such securities or investments or deducted in computing the sales proceeds therefrom and shall be accounted for accordingly.

11.4 Communications from Participants: All enrollments, elections, designations, applications, and other communications by or from an Employee, Participant, Beneficiary, or legal representative of any such person regarding that person's rights under the Plan shall be made in the form and manner established by the Board and shall be deemed to have been made and delivered only upon actual receipt by the person designated by the Board to receive such communication. Neither the Board nor the Employer shall be required to give effect to any such communication that is not made on the prescribed form and in the prescribed manner and that does not contain all information called for on the prescribed form. The Employer shall promptly furnish the Board or its designee a copy of any such communication that is delivered or transmitted to the Employer.

11.5 Communications to Participants: All notices, statements, reports, and other communications from the Board or an Employer to any Employee, Participant, Beneficiary, or legal representative of any such person shall be deemed to have been duly given when delivered to, or when mailed by first class mail, to such person at his or her last mailing address appearing on the Plan records.

11.6 Time Periods: As necessary or desirable to facilitate the proper administration of the Plan and consistent with the requirements of section 457 of the Code, the Board may further restrict the time periods during which a Participant or Beneficiary is required to make any election under the Plan, including the making or amending of a Deferral Agreement, the making or amending of Investment Option selections, the election of distribution commencement dates or distribution forms.

Formatted: Tab stops: 0.42", Left

11.7 Use if Plan Assets that are Not Attributable to an Account: If the Plan receives money that is not attributable to an Account, then the Employer will direct the Administrative Services Providers as to the use of these amounts. Examples include, but are not limited to, monies received by the Plan as part of a settlement, litigation award or fee reimbursement. The Employer may use these amounts to offset Plan expenses or may allocate these amounts to Participants or as it deems appropriate.

Formatted: Underline

Formatted: Underline

## Article 12 - General Provisions

12.1 Amendment: Subject to the requirements of the Government Code, the Board reserves the right at any time to amend or modify the Plan without the consent of any Participant or Beneficiary. The Board shall give notice of any such amendment or modification to participating Employees. Except as may be required to maintain the status of the Plan as an Eligible Deferred Compensation Plan under section 457 of the Code or to comply with other applicable law, no amendment or modification shall impair any individual's right to benefits under the Plan or expand any Employer's obligation to provide benefits with respect to amounts previously credited to Participants' Accounts.

12.2 Effect on Employment: Nothing contained herein shall give any Employee the right to be retained in the employment of the County or affect the right of an Employer to terminate any Employee's employment.

12.3 Binding Contract: The terms of this Plan, as duly amended from time to time, shall constitute a contract between Participant and the Employer and shall be binding, as applicable, upon their heirs, administrators, trustees, successors, assigns, and Beneficiaries.

12.4 Supplementary Information and Procedures: Explanatory brochures, pamphlets, or notices distributed by the Board to Employees, Participants, Beneficiaries, or Employers may be distributed to information purposes and shall not override any provision of this Plan or give any person any claim or right not provided for under this Plan. Notwithstanding the foregoing, to the extent that the terms of this Plan document authorize the Board to adopt supplementary guidelines or procedures, any publication announcing such guidelines or procedures may be relied upon by the persons to whom it is distributed, unless and until modified by a subsequent publication. Any procedural requirement described in any such publication shall be binding upon the Employee, Participant, Beneficiary, or Employer, as applicable, to the same extent as if such requirement were set forth in this Plan document.

12.5 Incompetence of Payee: If an Employer or the Board shall find that any person to whom any amount is payable under the Plan is unable to care for his or her affairs, is a minor, or has died, any payment due him or her, or his or her estate, may be paid to his or her spouse, a child, a relative, or any other person having maintaining or having custody of such person, unless a prior claim therefore has been made by a duly appointed legal representative. Any such payment shall be a complete discharge of all liability under the Plan thereof.

12.6 Applicable Law: This Plan shall be construed under the laws of the State of California and in conformity with the requirements of section 457 of the Code and all regulations thereunder applicable to Eligible Deferred Compensation Plans.

-- COUNTY OF EL DORADO --

Dated: \_\_\_\_\_

By: \_\_\_\_\_

*Name, Title*  
Board of Supervisors

ATTEST:

Suzanne Allen de Sanchez,  
Clerk of the Board of Supervisors

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Deputy Clerk