County of Los Angeles
CHIEF EXECUTIVE OFFICE
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Chief Executive Officer

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Fifth District

December 2, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

TECHNICAL CHANGES TO THE 401(K) SAVINGS PLAN AND OTHER COUNTY CODE CHANGES NECESSARY TO MAINTAIN COMPLIANCE WITH FEDERAL TAX LAW
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)

SUBJECT

The accompanying ordinance makes technical amendments to the County's 401(k) Savings Plan to accommodate a new form of investment option known as a "Self-Directed Brokerage Account." This ordinance also codifies other changes necessary to conform County Code provisions with the requirements of federal tax law and related Internal Revenue Service (IRS) regulations. These changes pertain to non-represented employees only and are purely technical in nature. They pose no additional County cost.

IT IS RECOMMENDED THAT YOUR BOARD:

Adopt the accompanying ordinance amending the 401(k) Savings Plan to permit the implementation of a Self-Directed Brokerage Account and make other changes necessary to maintain County Code compliance with federal tax law and related IRS regulations.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The 401(k) Savings Plan Administrative Committee (PAC) is responsible for the administration of the Plan, including the selection of the investment options made available to participants. The PAC has adopted a new investment model that provides three unique investment vehicles: Target Date Funds, Asset Class Funds, and a Self-Directed Brokerage Account. The underlying fund managers for the Target Date Funds and Asset Class Funds are selected and monitored by the PAC according to an investment policy and other criteria adopted by the PAC. Communications material on these new options was recently disseminated to all Plan participants. Educational "workshops" were also held throughout the County.

The Self-Directed Brokerage Account provides participants with the opportunity to invest in securities not otherwise available through the Plan. This includes individual stocks and bonds of publicly traded companies on the major exchanges as well as other mutual funds not currently provided through the plan. Certain investment vehicles will be excluded, however, if not permitted by law or if otherwise inappropriate for a plan of this type. This would include, for example, leveraged investments where the potential for loss may be greater than an individual's account balance. Also excluded are investments in options, futures, currencies, and other speculative investments. The PAC has the discretion to place restrictions on these and other forms of investments as it deems appropriate.

The Self-Directed Brokerage Account is clearly an option geared toward the more experienced and knowledgeable investors who understand the risks involved. The PAC's communications efforts on this program have emphasized this point. Moreover, each investor must agree to assume all risk as a condition of participating in this option. The amendments included in the accompanying ordinance codify the changes in administrative procedures and other changes to the "plan document" that are necessary to implement this change.

An identical Self-Directed Brokerage Account option will also be extended to represented employees through the 457 Horizons Plan. We will be returning to your Board with similar, but separate recommendations for County Code amendments affecting that plan at a later date. We intend to make actual implementation of this new option in both the 401(k) Savings Plan and 457 Horizons Plan occur simultaneously following your Board's adoption of all of the necessary County Code changes for both programs.

The accompanying ordinance makes other housekeeping changes necessary for the efficient operation of the 401(k) Savings Plan or to maintain compliance with federal tax law. For example, the ordinance identifies Roth IRA's as an eligible form of retirement plan to receive rollover distributions, and it clarifies language relating to federally imposed annual contribution limits for 401(k) plans. In addition, this ordinance amends existing County Code provisions relating to termination pay for County officers, and other non-represented employees compensated as County officers, by clarifying when a termination from County service has occurred and by when any final termination pay must be disbursed. This, too, is necessary to conform the relevant County Code provisions to current tax law and related IRS regulations. This will cause no substantive change in any existing pay policy or practice.

FISCAL IMPACT/FINANCING

None. The cost of administering the 401(k) Savings Plan is fully paid by fees charged to Plan participants. The costs of administering the Self-Directed Brokerage Account will likewise be fully paid by the participants who make use of that particular option.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Savings Plan is a tax-favored retirement plan that must comply with existing tax law and regulatory requirements, including the requirement that the Plan document and Plan operations be consistent. County Code Section 5.26 serves as the federally required plan document for the Savings Plan and it must be amended when necessary to maintain compliance with the law. The proposed amendment will update the plan document to reflect the brokerage window enhancement and other IRS required technical changes.

The accompanying ordinance has been approved as to form by County Counsel.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

None.

Respectfully submitted,

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:DL
WGL:DT:df

Attachment

c: Executive Office, Board of Supervisors
County Counsel
Auditor-Controller
DHR
Savings Plan Administrative Committee

ANALYSIS

An ordinance amending Title 5 – Personnel and Title 6 – Salaries of the Los Angeles County Code, relating to Chapter 5.26, "Savings Plan"; Chapter 6.08, "Step Pay Plan"; and Chapter 6.18 "Vacations"; to:

- Define the administration and responsibilities related to the self-direct brokerage option made available in the Savings Plan;
- Incorporate technical changes to the Savings Plan to satisfy and comply with tax laws and regulations.

RAYMOND G. FORTNER, JR.
County Counsel

By: _____
HALVOR S. MELOM
Principal Deputy County Counsel
Labor & Employment Division

HSM:asv
Requested: 10-30-08
Revised 11-13-08

ORDINANCE NO. _____

An ordinance amending Title 5 – Personnel and Title 6 – Salaries of the Los Angeles County Code, relating to Chapter 5.26, Savings Plan; Chapter 6.08, Step Pay Plan; and Chapter 6.18, Vacations.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 5.26.020 is hereby amended to read as follows:

5.26.020 Definitions.

...

8. "Broker" means the brokerage house with which the Administrative Committee contracts to administer Personal Brokerage Account Windows opened by Participants.

9. "Brokerage Investments" means those investments in which a Participant may elect to invest through a Personal Brokerage Account Window that the Participant may open. Brokerage Investments are not designated by the Administrative Committee as investment alternatives under the Plan; however, the Administrative Committee may place trading restrictions on the types of Brokerage Investments that may be held by the Plan.

10. "Brokerage Money Market Fund" means the default money market fund in which the Broker holds a Participant's Investment Account assets under a Participant Brokerage Account Window: (1) when such assets are first transferred to the Personal Brokerage Account Window from Core Funds and until they have otherwise been invested in Brokerage Investments as directed by the Participant; (2)

when such assets are held under the Personal Brokerage Account Window but have not otherwise been invested at the Participant's direction; (3) before such assets are transferred back to Core Funds; and (4) if the Participant has otherwise directed that such assets be invested in that Fund.

~~8.~~ 11. "Catch-Up Contributions" means contributions made by the County on or after January 1, 2002, as specified in Section 5.26.060B.

~~9.~~ 12. "Code" means the Internal Revenue Code of 1986, as amended.

~~10.~~ 13. a. "Compensation" means base rate, as established in Title 6 of the Los Angeles County Code, as amended, plus:

...

~~11.~~ 14. "Compensation Deferral Agreement" means an agreement pursuant to which an Employee agrees to reduce, or to forego an increase in, his Eligible Earnings and the County agrees to contribute to the Plan the amount of the reduction or the amount foregone as a Tax Deferred Contribution.

15. "Core Funds" means the investment funds designated by the Administrative Committee as available investment options under the Plan. The Administrative Committee shall design the investment policies governing the Core Funds.

~~12.~~ 16. "County" means the County of Los Angeles and (a) any governmental entity of which the Los Angeles County Board of Supervisors is the governing body, and (b) any Trial Court Entity to the extent participation in the Plan by

such entity is authorized by state law or rules of court and provided such entity has not elected not to participate in the Plan.

~~13.~~ 17. "County Contributions" means Tax Deferred Contributions, if any, as specified in Section 5.26.060, After-Tax Contributions, if any, as specified in Section 5.26.065, a Termination Pay Contribution, if any, as specified in Section 5.26.173, and Matching Contributions, if any, as specified in Section 5.26.110.

~~14.~~ 18. "Disability" means the complete and continuous inability and incapacity of the Participant to perform the duties of his or her position with the County.

~~15.~~ 19. "Eligible Earnings" means any compensation paid to an Employee for service performed for the County which is currently includible in gross income under the Code, or which would be so includible had the Employee not signed a Compensation Deferral Agreement. On or after March 1, 2003, Eligible Earnings shall have the same meaning as "415 Compensation."

~~16.~~ 20. "Eligible Employee" means a full-time permanent Employee who is not a Leased Employee, is not in an Excluded Bargaining Unit and who is designated by the Los Angeles County Board of Supervisors as eligible to participate in the Plan. For purposes hereof, "full-time permanent" means any employee appointed to an "A," "L" or "N" item pursuant to Title 6 of the Los Angeles County Code, or any employee appointed to a "D" item pursuant to said Title 6 who is required to possess a California license to practice as a Registered Nurse. Any employee who would otherwise cease to be an Eligible Employee because of a change in employment classification and/or entry into an Excluded Bargaining Unit shall remain an Eligible Employee until the last

day of the month following the month in which such change or entry occurs or such later date as the Administrative Committee may provide; provided, however, that the County and representatives of an Excluded Bargaining Unit may, subject to approval by the Los Angeles County Board of Supervisors, agree that any employee who would otherwise cease to be an Eligible Employee because of certification or accretion of the employee' s employment classification into an Excluded Bargaining Unit may continue as an Eligible Employee for such period as may be established in such agreement. Effective as of September 1, 1994, Special Eligible Employees shall be treated as if they are Eligible Employees until March 31, 2004, for purposes of making Tax Deferred Contributions, but not for the purpose of having any other County Contributions made on their behalf. An Employee who is not otherwise eligible to participate in this Plan shall not become an Eligible Employee solely by becoming an inactive Participant through the merger of the Deferred Earnings Plan into this Plan.

~~17.~~ 21. "Eligible Rollover Distribution" means any distribution of all or part of the balance to the credit of the Participant in an "eligible retirement plan" as defined in Plan section 5.26.610A (including the Plan where applicable), other than (1) any distribution which is one of a series of substantially equal periodic payments made not less frequently than annually for the life (or life expectancy) of the Participant or beneficiary or the joint lives (or joint life expectancies) of such individual and his designated beneficiary, or for a specified period of 10 years or more; (2) any distribution to the extent such distribution is required by Code Section 401(a)(9); and (3) any distribution which is (a) a return of elective deferrals described in Section 1.415-

6(b)(6)(iv) of the Treasury Regulations which is returned due to the limitations under Code Section 415, (b) a corrective distribution of excess contributions described in Section 1.401(k)-1(f)(4) of the Treasury Regulations, excess deferrals described in Section 1.402(g)-1(e)(3) of the Treasury Regulations or excess aggregate contributions described in Section 1.401(m)-1(e)(3) of the Treasury Regulations, together with the income allocable thereto, (c) a loan treated as a distribution under Code Section 72(p) and not excepted from such treatment under Code Section 72(p)(2), (d) a deemed distribution of a loan in default, (e) a dividend on employer securities described in Code Section 404(k), (f) the P.S. 58 cost of life insurance coverage, and (g) any other similar item designated by the Commissioner of Internal Revenue. For distributions made on or after January 1, 2000, an Eligible Rollover Distribution also does not include any distribution or withdrawal of Tax Deferred Contributions due to Hardship as provided in Section 5.26.300 and under Code Section 401(k). For distributions made on or after January 1, 2002, an Eligible Rollover Distribution also does not include any distribution or withdrawal of Matching Contributions or Tax Deferred Contributions due to Hardship as provided in Section 5.26.300.

~~18.~~ 22. "Employee" means any person who: (a) has been determined by the County (regardless of any determination made by any other person or entity) to be an employee of the County within the meaning of Code Section 3401(c) for federal income and/or employment tax purposes; or (b) is a Leased Employee as defined in subsection 31 of this section and as provided in Section 5.26.055. If it is determined that an individual was erroneously categorized as not being an Employee, he or she

shall be treated as an Employee under the Plan only prospectively from the date of such determination.

~~19.~~ 23. "Entry Date" means September 1, 1984, and the first day of every succeeding month unless otherwise provided by the Administrative Committee.

~~20.~~ 24. "Excluded Bargaining Unit" means an employee representation unit, unless the representative of such unit and the County agree that the Employees in such unit shall be covered hereunder.

~~21.~~ 25. "415 Compensation" means wages, within the meaning of Section 3401(a) of the Code (for purposes of income tax withholding) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, paid to an Employee by the County. Effective for years beginning on and after January 1, 1998, 415 Compensation also includes any County contribution under a cash or deferred arrangement (including Tax Deferred Contributions) for the year, any County contributions to purchase an annuity contract under Code Section 403(b) under a salary reduction agreement, any other elective deferral (as defined in Code Section 402(g)(3)) and any amount which is contributed to a plan sponsored by the County at the election of the Employee and which is not includible in gross income under Code Section 125 or Code Section 457. For Limitation Years (as defined in Section 5.26.160) beginning on and after January 1, 2001, 415 Compensation paid or made available during such Limitation Years shall include elective amounts that are not includible in the gross income of the Employee by reason of Code Section 132(f)(4). On or after January 1, 2003, 415 Compensation also

includes any amount that is not available in cash to an Employee under the Choices, Options, Flexible Benefit Plans or Mega-Flex Plans (or a successor plan) because the Employee is unable to certify that the Employee has other health coverage. Except as provided in Part 4.5, 415 Compensation shall not include any Settlement Award (as defined in Part 4.5). In order to be taken into account as 415 Compensation, an item of compensation must be paid (or treated as paid) to the Participant prior to the Participant's Severance Date, provided, however, the following types of post-employment payments are included within 415 Compensation if they are paid by the later of 2½ months after the Participant's Severance Date or the end of the calendar year in which such Severance Date occurs: (i) payments that, absent a termination from employment, would have been paid to the Participant in the normal course of employment and are regular compensation for services during regular working hours or outside regular working hours (such as overtime or shift differential), bonuses or other similar compensation; and (ii) Termination Pay. For these purposes, the "County" includes any entity the employees of which, together with employees of the County, are required to be treated as if they were employed by a single employer under Code Section 414(b), (c), (m) or (o) (taking into account any adjustment made pursuant to Code Section 415(h)), and any entity whose employees are treated as employees of the County under Code Section 414(n).

~~22.~~ 26. "Hardship" means hardship as determined in a uniform and nondiscriminatory manner by the Administrative Committee, taking into account wherever applicable the definition of such term by the Treasury Department in its

regulations or other applicable guidance issued under Code Section 401(k), all on the basis of information supplied to the Administrative Committee by the Participant.

~~23.~~ 27. "Horizons Plan" means the County of Los Angeles Deferred Compensation and Thrift Plan.

~~24.~~ 28. "Investment Funds" means ~~the investment fund or funds selected from time to time by the Administrative Committee,~~ any Core Funds made available under the Plan. Such term also includes ~~including~~ the Participant Loan Fund, and the Brokerage Money Market Fund and Personal Brokerage Account Window in which Participants invest through a Personal Brokerage Account Window, if such Personal Brokerage Account Window is authorized by the Administrative Committee.

~~25.~~ 29. "Investment Manager" means the person(s) appointed by the Plan Administrator who, under such terms and conditions as the Plan Administrator may decide with respect to ~~an~~ any Investment Fund, except the Brokerage Investments in which Participants invest through a Personal Brokerage Account Window, has the discretion to determine which assets in such Fund shall be sold (or exchanged) and what investments shall be acquired for such Fund. In the alternative, an organization which is employed by the County to provide administrative and investment services (by agreement with one or more investment providers) may be designated an Investment Manager.

~~26.~~ 30. "Involuntary Early Severance" means a Participant's severance from County employment less than 90 days after execution of a Payroll Deduction

Authorization Agreement due to death, disability, layoff or other events that the County determines are beyond the control of the Participant.

~~27.~~ 31. "LACERA" means, collectively, the Los Angeles County Employees' Retirement Association and the defined benefit retirement plan administered thereby.

~~28.~~ 32. "Leased Employee" means any person described in Code Section 414(n)(2) for the purposes of the plan qualification requirements listed in Code Section 414(n)(3).

~~29.~~ 33. "Matching Contributions" means contributions made by the County as specified in Section 5.26.110.

~~30.~~ 34. "Matching Contributions Account" means an account to which the following are credited: (1) the Matching Contributions allocated to each Participant, (2) the funds transferred to the Plan from the Participant's matching contribution account under the Deferred Earnings Plan, if any, upon the merger of the Deferred Earnings Plan with this Plan, and (3) any earnings, investment gains or losses and applicable Plan expenses allocable to the foregoing .

~~31.~~ 35. "Participant" means an Eligible Employee or a former Eligible Employee who has become and continues to be a Participant of the Plan in accordance with the provisions of Part 2 of this chapter, or an Employee or former Employee who became an inactive Participant in accordance with Part 2 of this chapter solely due to the merger of the Deferred Earnings Plan into this Plan.

~~32.~~ 36. "Participant Loan Fund" means the Investment Fund provided for in Section 5.26.310.

~~33.~~ 37. "Payroll Deduction Authorization Agreement" means the one-time, binding and irrevocable agreement by which an Eligible Employee elects to make a Termination Pay Contribution to the Plan, which satisfies the requirements specified in Section 5.26.175.

38. "Personal Brokerage Account Window" means an arrangement under which a Participant contracts with the Broker to open a brokerage account through which a portion of his or her Investment Account may be invested in the Brokerage Money Market Fund and various Brokerage Investments. The Administrative Committee shall have authority to authorize or discontinue the Personal Brokerage Account Window at its discretion.

~~34.~~ 39. "Plan" means the County of Los Angeles Savings Plan, the terms and provisions of which are herein set forth, as the same may be amended, supplemented or restated from time to time.

~~35.~~ 40. "Plan Year" means a calendar year.

~~36.~~ 41. "QDRO" means a "qualified domestic relations order," which is a domestic relations order that the Administrative Committee has determined satisfies the requirements of a qualified domestic relations order as defined in Code Section 414(p)(1) and is consistent with the terms of this Plan.

~~37.~~ 42. "Qualified Plan" means an employee benefit plan that is qualified under Section 401(a) of the Code.

~~38.~~ 43. "Rollover Contributions" means contributions received by the Plan pursuant to Section 5.26.610A.

~~39.~~ 44. "Rollover Contributions Account" means an account to which the Rollover Contributions received on behalf of each Participant, and any earnings, investment gains or losses and applicable Plan expenses allocable thereto, are credited.

~~40.~~ 45. "Salary Deduction Agreement" means an agreement pursuant to which an Employee agrees to have an amount deducted from his Eligible Earnings, on an after-tax basis, and the County agrees to contribute to the Plan the amount deducted as an After-Tax Contribution.

~~41.~~ 46. "Severance Date" means the date upon which an Eligible Employee or a Participant terminates employment with the County for any reason.

~~42.~~ 47. "Special Eligible Employee" means each of the Employees designated by the Board of Supervisors of the County in the resolution enacting Ordinance No. 2008-0004, who until March 31, 2004, shall be treated as if he or she is an Eligible Employee for purposes of making Tax Deferred Contributions (but no other County Contributions), notwithstanding the Employee's change in employment classification to other than full-time permanent or entry into an Excluded Bargaining Unit.

~~43.~~ 48. "Tax Deferred Contributions Account" means an account to which the following are credited: (1) the Tax Deferred Contributions and Catch-Up Contributions, subject to any action taken by the Administrative Committee under

Section 5.26.190 to establish a separate account or subaccount for such Catch-Up Contributions, made for each Participant, (2) the funds transferred to the Plan from the Participant's tax deferred contribution account under the Deferred Earnings Plan, if any, upon the merger of the Deferred Earnings Plan with this Plan, and (3) any earnings, investment gains or losses and applicable Plan expenses allocable to the foregoing.

~~44. "Tax Deferred Contributions Account" means an account to which the Tax Deferred Contributions and, effective January 1, 2002, Catch-Up Contributions, subject to any action taken by the Administrative Committee under Section 5.26.190 to establish a separate account or subaccount for such Catch-Up Contributions, made for each Participant, and any earnings, investment gains or losses and applicable Plan expenses allocable thereto, are credited.~~

~~45.~~ 49. "Termination Pay" means amounts paid by the later of 2½ months after the Participant's Separation from Employment or the end of the calendar year in which the Participant's Separation from Employment occurs in redemption of accrued bona fide sick, vacation or other leave that otherwise would be paid in cash to the Participant under section 6.24.040A of the Los Angeles County Code, and which the Participant would have been able to use if employment had continued.~~the amount paid to a Participant upon termination of County employment as a redemption of unused accrued benefits as provided in Los Angeles County Code Section 6.24.040A or as leaving vacation described in Los Angeles County Code Section 6.18.070C (these accrued benefits commonly referred to as "Time Certificates"). The Termination Pay~~

~~taken into account for all purposes under the Plan shall be limited in accordance with Code Section 401(a)(17).~~

~~46.~~ 50. "Termination Pay Contribution" means a contribution made by a Participant pursuant to a Payroll Deduction Authorization Agreement, as specified in Section 5.26.173.

~~47.~~ 51. "Termination Pay Contribution Account" means an account to which the Termination Pay Contribution made for each Participant, and any earnings, investment gains or losses and applicable Plan expenses allocable thereto, is credited.

~~48.~~ 52. "TPA" means a third-party administrator who has entered into a contract with the County to provide record-keeping or other administrative services for the Plan.

~~49.~~ 53. "Trial Court Act" means the Trial Court Employment Protection and Governance Act, California Government Code Section 71600 et seq.

~~50.~~ 54. "Trial Court Employee" means a "trial court employee," as defined under the Trial Court Act, who is an Eligible Employee.

~~51.~~ 55. "Trial Court Entity" means each Los Angeles County Municipal Court, Los Angeles County Superior Court, and each unified, successor trial court entity (or portion thereof) established in the County pursuant to California Government Code Section 70200 et seq.

~~52.~~ 56. "Trust Agreement" means any agreement between the County and a Trustee as in effect from time to time.

~~53.~~ 57. "Trustee" means any person that is a custodian or trustee and that is appointed by the Board of Supervisors of the County to hold and administer some or all of the assets of the Plan pursuant to Part 8 of this chapter.

~~54.~~ 58. "Valuation Date" means the date with respect to which the value of the Plan assets or any portion thereof is determined. Unless otherwise determined by the Administrative Committee, a Valuation Date occurs each day.

~~55.~~ 59. "Year of Service" means an Employee shall be credited with a Year of Service for each Plan Year (including the Plan Year commencing September 1, 1984, and ending December 31, 1984) in which he is employed by the County and is a Participant in the Plan, the Deferred Earnings Plan or in the Horizons Plan.

SECTION 2. Section 5.26.140 is hereby amended to read as follows:

5.26.140 Reduction of Matching Contributions.

The amount of Matching Contributions determined to be payable to the ~~Investment Funds~~ Matching Contributions Account pursuant to this Part 4 shall be reduced first in accordance with the provisions of Section 5.26.160C (with respect to amounts held in a suspense account) and then in accordance with Section 5.26.338.

SECTION 3. Section 5.26.150 is hereby amended to read as follows:

5.26.150 Return of Contributions to County.

...

B. If any County Contribution is made by the County due to a mistake of fact, such contribution (but not the earnings thereon) shall, to the extent permitted by applicable law, at the direction of the Administrative Committee, be returned to the

County within one year after it is made; if such contribution constituted a Tax Deferred Contribution, After-Tax Contribution, Termination Pay Contribution or Rollover Contribution, it shall thereafter be returned to the Participant to the extent permitted by applicable law. Additionally, if the Plan, or a portion thereof, is determined by the Internal Revenue Service not to satisfy the requirements of Code Sections 401(a) and 401(k) for a qualified governmental plan containing a cash or deferred arrangement, any County Contributions attributable to that portion of the Plan that is determined to not be so qualified, and attributable to the period for which it is determined to not be so qualified, shall, at the direction of the Administrative Committee, be returned to the County. All amounts to be returned to the County must be returned from assets invested in Core Funds. If any Participant has insufficient assets invested in Core Funds, the Administrative Committee may transfer assets from Brokerage Investments to Core Funds as necessary.

SECTION 4. Section 5.26.160 is hereby amended to read as follows:

5.26.160 Provision Pursuant to Code Section 415(c).

...

1. ""Annual Addition" means the sum of the following amounts credited to a Participant's account for any Limitation Year: (a) all contributions made by the County ~~that are allocated~~ to ~~a~~ ~~Participant's account under a~~ any qualified defined contribution plan maintained by the County, (b) all contributions made by the Participant to ~~a~~ any qualified defined contribution plan maintained by the County, (c) all forfeitures ~~allocated to a Participant's account~~ under ~~a~~ any qualified defined

contribution plan maintained by the County, and (d) ~~any amount allocated~~ contributions to an individual medical benefit account (as defined in Code Section 415(l)(2)) of a Participant that is part of a pension or annuity plan maintained by the County (except that the 25 percent of 415 Compensation limit, or, for Limitation Years beginning on or after January 1, 2002, the 100 percent of 415 Compensation limit, does not apply to such an individual medical benefit account).

...

SECTION 5. Section 5.26.200 is hereby amended to read as follows:

5.26.200 Investment of Contributions.

...

1. Each Participant may instruct the Trustee or TPA, as applicable, to allocate his Tax Deferred Contributions, After-Tax Contributions, Termination Pay Contribution, Rollover Contributions and, if his Matching Contributions Account is 100 percent vested and nonforfeitable under Section 5.26.250, Matching Contributions (collectively, "Contributions") among the Investment Funds. A Participant may only instruct the Trustee or TPA to allocate amounts to the Personal Brokerage Account Window if the Participant's Account balance invested in the Core Funds satisfies the threshold level determined by the Administrative Committee. A Participant may change the allocation of future Contributions among Core Funds and may transfer past Contributions, adjusted for earnings, gains and losses, and applicable Plan charges, if any, from one ~~Investment Fund~~ Core Fund to another, or between a Core Fund and the Personal Brokerage Account Window. Amounts allocated to and from the Personal

Brokerage Account Window are allocated pursuant to Section 5.26.200.C. A Participant may make investment elections and changes at the time and manner prescribed by procedures established from time to time by the Administrative Committee.

...

4. Investment through Personal Brokerage Account Window. Any amount of a Participant's Account allocated by a Participant to the Personal Brokerage Account Window pursuant to Section 5.26.200.A.1 shall be transferred first into the Brokerage Money Market Fund. Thereafter, the Participant may direct the Broker to invest those amounts in any available Brokerage Investments. The Administrative Committee, in its discretion, may restrict the types of Brokerage Investments that may be held by the Plan. Transfers from the Personal Brokerage Account Window to Core Funds shall be made only from the Brokerage Money Market Fund.

...

SECTION 6. Section 5.26.210 is hereby amended to read as follows:

5.26.210 Trust Fund Allocation and Valuation.

...

1. Except as may otherwise be provided by the Administrative Committee, the assets credited to each Participant's Account shall be allocated among the ~~Investment~~ Core Funds in accordance with the investment option or options chosen by such Participant or the Administrative Committee, as the case may be, effective no later than the first business day following the business day on which the Trustee or its agent has received appropriate instructions, or such later date as is commercially

reasonable under the circumstances. Assets transferred from the Core Funds to the Personal Brokerage Account Window shall be swept into the Brokerage Money Market Fund effective no later than the evening of the business day in which the Broker receives complete cashiering instructions requesting the transfer, or such later date as is commercially reasonable under the circumstances. Assets transferred from the Personal Brokerage Account Window to the Core Funds shall be wired from the Broker to the Trustee and allocated to the Core Funds effective no later than the first business day following the business day on which the Broker receives cashiering instructions requesting the transfer, or such later date as is commercially reasonable under the circumstances. Transfers from the Brokerage Money Market Fund to Brokerage Investments, between Brokerage Investments, and from such Brokerage Investments back to the Brokerage Money Market Fund, shall be made in the time and manner provided for in the agreement between the Participant and the Broker.

...

B. Valuation.

1. As of the close of business of each Valuation Date, the TPA or the custodian, as delegated by the Administrative Committee, shall determine or cause to be determined the value of each ~~Investment~~ Core Fund. Valuation of the Participant holdings in the Brokerage Investments shall be communicated to the TPA by the Broker pursuant to the agreement between the Administrative Committee and the Broker. The TPA or custodian may rely on net asset value calculations, book values and other data with respect to the value of Plan assets held in the Investment Funds furnished to it by

the Administrative Committee, Investment Managers, the County Treasurer, custodians or other entities authorized to provide valuation data. The TPA or custodian shall communicate such valuation to the Trustee. The TPA or custodian shall be responsible for monthly reconciliation of its records with the records of the third-parties from which it receives valuation data.

2. Each such valuation shall be made on the basis of the net gain or loss to each such ~~Investment~~ Core Fund between the current Valuation Date and the last preceding Valuation Date. The net gain or loss of ~~an Investment~~ a Core Fund shall include realized and unrealized earnings, interest income, dividends actually paid and other income of such Fund during such period, and shall be reduced by expenses paid, if any, that are to be charged to such ~~Investment~~ Core Fund in accordance with the terms of the Plan and the Trust Agreement. The transfer of funds to or from ~~an Investment~~ a Core Fund, the allocation of Tax Deferred Contributions, After-Tax Contributions, Termination Pay Contributions, Rollover Contributions and Matching Contributions, and payments, distributions and withdrawals from ~~an Investment~~ a Core Fund to provide benefits under the Plan for Participants or Beneficiaries shall not be deemed to be income, expenses or losses of the ~~Investment~~ Core Fund. A similar valuation shall be made at any other time the TPA or custodian, Administrative Committee or its agent deems it appropriate to make such a valuation.

3. Notwithstanding the foregoing, the Administrative Committee or its agent may, in accordance with applicable requirements of applicable law, instruct the TPA or custodian to (a) adopt such accounting procedures as the Administrative

Committee or its agent considers appropriate, reasonable and equitable to establish a proportionate crediting of net gain or loss of an Investment Fund and of Contributions made to an Investment Fund as of each Valuation Date, and (b) adopt such other valuation procedures as the Administrative Committee or its agent considers appropriate, reasonable and equitable to determine the value of the Investment Funds. Subject to the TPA's or custodian's rights and duties under the contract between it and the County, the reasonable and equitable decision of the TPA or custodian as to the value of each Investment Fund as of each Valuation Date shall be conclusive and binding upon all Participants and Beneficiaries having any interest, direct or indirect, in such Investment Fund."

...

SECTION 7. Section 5.26.245 is hereby added to read as follows:

5.26.245 Distribution, Withdrawals or Loans from Core Funds.

Distributions, Withdrawals or Loans from Core Funds. All Distributions, Withdrawals or Loans must be made from amounts allocated to Core Funds. If the Participant has allocated an insufficient amount to Core Funds for a requested Distribution, Withdrawal, or Loan, the Participant must transfer sufficient amounts from the Personal Brokerage Account Window to Core Funds to enable the requested Distribution, Withdrawal or Loan. The Administrative Committee may reallocate the funds in a Participant's Account from the Personal Brokerage Account Window to Core Funds if such action is necessary for the administration of the plan.

SECTION 8. Section 5.26.310 is hereby amended to read as follows:

5.26.310 Loans to Participants.

A. Upon application by a Participant, but subject to such uniform and nondiscriminatory rules as the Administrative Committee may establish and to the provisions of this section, effective January 1, 1986, the Administrative Committee may in its discretion direct the Trustee to make a loan or loans to a Participant from his separate account in the Participant Loan Fund in an amount not exceeding the excess of:

1. The lesser of:

...

b. 50 percent of the vested portion of the Participant's Account balance (not including amounts attributable to a Participant's After-Tax Contributions Account); <u>or</u>

<u>c. 100 percent of the vested portion of the Participant's Account balance allocated to Core Funds.</u>

...

SECTION 9. Section 5.26.420 is hereby amended to read as follows:

5.26.420 Expense Charges to Plan.

...

C. Expenses incurred as a result of contractors performing the Plan functions described in Sections 5.26.340 through 5.26.410, TPA and Trustee fees, and the cost of fiduciary and liability insurance, are limited by the contract or contracts approved by the Administrative Committee or the Board of Supervisors, and will be charged through the

Trustee or reimbursed from Plan assets and paid to the County. The expenses, fees and costs so charged will be allocated to the individual Participants' accounts and shall be reflected on quarterly statements. Fees incident to investments in specific Brokerage Investments available through the Personal Brokerage Account Window are not limited by the contract or contracts approved by the Administrative Committee or the Board of Supervisors.

...

SECTION 10. Section 5.26.465 is hereby amended to read as follows:

5.26.465 Rights of an Alternate Payee Under a QDRO.

...

D. The Alternate Payee's interest specified in the QDRO shall be segregated and/or distributed from the Participant's Accounts, and the ~~Investment Funds~~ Core Funds in which such Accounts are invested, on a pro rata basis. If the assets invested in the Core Funds are insufficient to satisfy the QDRO, the Administrative Committee may transfer amounts from the Personal Brokerage Account Window to the Core Funds as necessary.

...

SECTION 11. Section 5.26.610 is hereby amended to read as follows:

5.26.610 Rollovers and Plan-to-Plan Transfers.

...

B. Rollovers from the Plan.

1. A Participant who is entitled to receive an Eligible Rollover Distribution from the Plan, may direct the Administrative Committee to have the distribution transferred in a lump sum directly to the trustee of one of the following "eligible retirement plans": (a) an individual retirement account under Code Section 408(a); (b) an individual retirement annuity under Code Section 408(b); (c) an annuity plan described in Code Section 403(a); or (d) a plan which is qualified under Code Section 401(a) and permits the acceptance of rollover contributions. Effective for any distributions made on or after January 1, 2002, the term "eligible retirement plan" also shall include: (y) an annuity contract under Code Section 403(b), and (z) an eligible deferred compensation plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the Plan. Effective for any distributions made on or after January 1, 2008, the term "eligible retirement plan" also shall include: a Roth IRA under Code Section 408A.

...

SECTION 12. Section 6.08.080 is hereby amended to read as follows:

6.08.080 Interdepartmental transfers.

...

D. When a person is transferred, any unused current or deferred vacation, accumulated overtime, accumulated holiday time, or accumulated sick leave to which he may be entitled at the time of transfer shall be transferred in whole to the department

to which he is transferred. Payment for such accumulated overtime and vacation may be made in a lump-sum payment if specifically authorized by the chief administrative officer. This subsection D shall not apply to persons appointed to any position paid as a county officer pursuant to Section 6.28.020 of this code. When a person appointed by the board of supervisors to such position prior to July 19, 1994, ceases to hold such position, he shall have restored to him benefits to which he was entitled prior to such appointment, less any time chargeable to such benefits had such office not been subject to Item L of Section 6.28.020. A person who has held such a position for five or more years shall not receive compensation upon termination for benefits restored under this paragraph. A person who has held such a position for less than five years shall be entitled to compensation upon ~~termination~~ Separation from Service for unused restored benefits, less one day of such benefits for each month served as a county officer. Payments pursuant to this subsection D to persons holding office subject to Item L of Section 6.28.020 shall be in lieu of payments pursuant to subsection C of Section 6.18.070, except payments made by reference to subsection A of Section 6.18.070; provided further, that such persons may elect to be paid either the amount specified in this subsection D or that specified in Section 6.18.070C, whichever is greater, but in no event to exceed the maximum amount payable pursuant to Section 6.18.070C. Any person appointed by the board of supervisors or elected on or after July 19, 1994, to a position paid as a county officer, shall be paid upon termination from county service for benefits accrued prior to such appointment or election which would, as provided in Titles 5 and 6 of this code, be paid upon termination from county service if such appointment

or election had not occurred. Any such payment shall be calculated at the rate of pay in effect immediately prior to appointment or election to such position.

1. With regard to any person appointed or elected to a position paid as a county officer on and after January 1, 2005, the term "termination from county service" as used in this section 6.08.080D shall mean a Separation from Service as defined herein.

2. Payments made pursuant to this section 6.08.080.D upon a Separation from Service shall be made on or before the 30th day following the employee's Separation from Service.

3. For purposes of this section 6.08.080.D., Separation from Service occurs when the employee terminates employment (including a termination from employment due to death or retirement) with the county (and any other public entity of which the Los Angeles County board of supervisors is the governing body).

a. A termination of employment will have occurred only if the county and employee reasonably anticipate that the level of bona fide services to be performed by the employee after that date (whether as an employee or an independent contractor) will permanently decrease to no more than 49% of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding testing period. For these purposes, the testing period is the preceding 36-month period or the full period of services to the county if the employee has been providing services for less than 36 months.

b. A termination of employment does not occur while the employee is on a Bona Fide Leave of Absence (as defined herein) if the period of such leave does not exceed 6 months or, if longer, so long as the individual retains a right to reemployment with the county under applicable statute, ordinance or contract. A Bona Fide Leave of Absence includes military leave, sick leave or other bona fide leave of absence under applicable rules, provided that there is a reasonable expectation that the employee will return to perform services for the county. If the Bona Fide Leave of Absence exceeds 6 months and the individual does not retain a right to reemployment under applicable statute, ordinance or contract, the employment relationship is deemed to terminate on the first date immediately following that 6-month period. Notwithstanding the foregoing, if a Bona Fide Leave of Absence is due to any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than six months, and where the impairment causes the employee to be unable to perform the duties of his or her position of employment or any substantially similar position of employment, a period of 29 months is substituted for the 6-month period otherwise applicable under this provision.

c. For purposes of section 6.08.080.D.3.a., for periods during which an employee is on a Bona Fide Leave of Absence (as defined in section 6.08.080.D.3.b.) and has not otherwise terminated employment, the employee is treated as providing bona fide services at a level equal to the level of services that the employee would have been required to perform to receive the compensation paid during

that Bona Fide Leave of Absence. Periods during which the employee is on an unpaid Bona Fide Leave of Absence are disregarded for the purposes of section 6.08.080.D.3.a.

SECTION 13. Section 6.18.070 is hereby amended to read as follows:

6.18.070 Leaving vacation.

...

C. Notwithstanding subsection (A)(3) of Section 6.18.030 or any other provision of this Title 6, any person employed and paid as a county officer on an item designated as L pursuant to the provisions of subsection B of Section 6.28.020 shall, when he has a Separation from Service with ~~leaves the service of~~ the county, be entitled to a lump-sum payment in accordance with subsection A of this section as if he were not such an officer; provided further, that in lieu of such payment, he shall be entitled to payment equal to one week's pay at his current rate for each year of his county service up to 10 years of service, and two weeks' pay at his current rate for each year of his county service in excess of 10 years of service, provided that the total payment does not exceed 25 weeks' pay at his current rate. Further, such officer may receive additional payment in an amount approved by the board, provided the total payment made pursuant to this section does not exceed the maximum of 25 weeks' pay at his current rate. ~~Payment made pursuant to this section shall be as provided in Section 6.24.040.~~ For purposes of this subsection, county service shall include any service rendered as an officer or employee of any other public entity of which the Los Angeles County board of supervisors is the governing body. Any person appointed

by the board of supervisors or elected to an item designated as "L" pursuant to the provisions of subsection B of Section 6.28.020 on or after July 19, 1994, shall not be entitled to any leaving vacation benefits pursuant to this subsection C as a result of such appointment or election, but shall have the right to be paid pursuant to Section 6.08.080D for any leaving vacation or other benefits accrued prior to such appointment or election.

1. Payment of the leaving vacation provided by this section 6.18.070.C shall be made on or before the 30th day following the employee's Separation from Service.

2. For purposes of this section 6.18.070.C., Separation from Service occurs when the employee terminates employment (including a termination from employment due to death or retirement) with the county (and any other public entity of which the Los Angeles County board of supervisors is the governing body).

a. A termination of employment will have occurred only if the county and employee reasonably anticipate that the level of bona fide services to be performed by the employee after that date (whether as an employee or an independent contractor) will permanently decrease to no more than 49% of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding testing period. For these purposes, the testing period is the preceding 36-month period or the full period of services to the county if the employee has been providing services for less than 36 months.

b. A termination of employment does not occur while the employee is on a Bona Fide Leave of Absence (as defined herein) if the period of such leave does not exceed 6 months or, if longer, so long as the individual retains a right to reemployment with the county under applicable statute, ordinance or contract. A Bona Fide Leave of Absence includes military leave, sick leave or other bona fide leave of absence under applicable rules, provided that there is a reasonable expectation that the employee will return to perform services for the county. If the Bona Fide Leave of Absence exceeds 6 months and the individual does not retain a right to reemployment under applicable statute, ordinance or contract, the employment relationship is deemed to terminate on the first date immediately following that 6-month period. Notwithstanding the foregoing, if a Bona Fide Leave of Absence is due to any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than six months, and where the impairment causes the employee to be unable to perform the duties of his or her position of employment or any substantially similar position of employment, a period of 29 months is substituted for the 6-month period otherwise applicable under this provision.

c. For purposes of section 6.18.070.C.2.a., for periods during which an employee is on a Bona Fide Leave of Absence (as defined in section 6.18.070.C.2.b.) and has not otherwise terminated employment, the employee is treated as providing bona fide services at a level equal to the level of services that the employee would have been required to perform to receive the compensation paid during

that Bona Fide Leave of Absence. Periods during which the employee is on an unpaid Bona Fide Leave of Absence are disregarded for the purposes of section 6.18.070.C.2.a.

SECTION 14. Pursuant to Government Code 25123(f), this ordinance shall take effect immediately upon final passage.

[519020DTCEO.1]