

ANALYSIS

This ordinance amends Title 5 – Personnel, of the Los Angeles County Code, relating to employee termination pay to be contributed on a pre-tax basis to qualified tax deferred plans by adding Chapter 5.18.

OFFICE OF THE COUNTY COUNSEL

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HSM:mv

ORDINANCE NO.

An ordinance amending Title 5 – Personnel of the Los Angeles County Code relating to the Termination Pay Pick Up Plan.

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

SECTION 1. Chapter 5.18, County of Los Angeles Termination Pay Pick Up Plan is hereby added to read as follows:

CHAPTER 5.18

COUNTY OF LOS ANGELES TERMINATION PAY PICK UP PLAN

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PART 1 GENERAL PROVISIONS

5.18.010. Adoption – Purpose.

The County of Los Angeles, pursuant to the order of its Board of Supervisors, hereby adopts the "County of Los Angeles Termination Pay Pick Up Plan," effective as of [_____], 2004. The Plan is designated a profit sharing plan and is intended to qualify under Code section 401(a).

The Plan is designed to allow Participants to contribute a portion of their Termination Pay to the Plan and have the County pick up such contributions as provided in Code section 414(h)(2), for the purpose of providing retirement and death benefits to Participants.

While the County intends to continue the Plan, it reserves the right to amend and/or terminate the Plan, in whole or in part, at any time, subject to negotiations with employee representatives. Benefits under the Plan shall at all times be limited to those payable from a Participant's account to the extent funded by contributions that have been made and credited to such account. Therefore, neither participation in the Plan nor eligibility thereafter shall entitle any employee to have the Plan or any of its provisions continued for his benefit in the future.

5.18.020. Definitions.

The following terms when used herein with initial capital letters, unless the context clearly indicates otherwise, shall have the following respective meanings:

1. "Account" means the account established by the Trustee for each Participant pursuant to Part 4 to which each Termination Contribution, as well as any earnings, investment gains or losses, and applicable expenses allocated thereto, is applied.
2. "Administrative Committee" means a committee consisting of the same individuals (including alternates) that serve on the administrative committee for the

County of Los Angeles Deferred Compensation and Thrift Plan. The Administrative Committee for the Plan shall meet jointly with the administrative committee for the Deferred Compensation and Thrift Plan. The Administrative Committee shall be the administrator of the Plan, and may delegate all or part of its powers, duties, and authority in such capacity (without ceasing to be the administrator of the Plan) as hereinafter provided.

3. "Administrator" or "Plan Administrator." The Administrator of the Plan, as defined in Code section 414(g), shall be the Administrative Committee, which may delegate all or any part of its powers, duties and authorities in such capacity (without ceasing to be the Administrator of the Plan) as hereinafter provided.

4. "Agent" means any agent duly authorized to perform specified duties by its respective principal.

5. "Alternate Payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a QDRO as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such Participant.

6. "Beneficiary" means such person or persons as a Participant may designate to receive his interest under the Plan after his death. The designation may be made, and may be revoked or changed, only by a written instrument (in form acceptable to the Administrative Committee) signed by the Participant and filed with the Administrative Committee before his death. In the absence of a designation and at any other time when there is no existing Beneficiary designated by the Participant, his Beneficiary shall be his spouse, if living 30 days after the date of his death, or, if not, his children (by blood or adoption) equally (with children of a deceased child to share equally the share of such deceased child). If a Beneficiary cannot be determined pursuant to the preceding sentence, the Beneficiary shall be the Participant's estate.

7. "Board" means the Board of Supervisors of the County of Los Angeles.

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

9. "County" means the County of Los Angeles and any Participating Employer, unless otherwise provided herein. In addition, for the purposes of determining 415 Compensation and applying the limitations under Code section 415(c), the "County" includes any entity the employees of which, together with employees of the County of Los Angeles or a Participating Employer (as applicable), 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).

10. "Discretionary Trustee" means a Trustee who, under the terms of the Trust Agreement, has the discretionary authority to invest the Plan assets in one or more Investment Funds.

11. "Effective Date" means [], 2004.

12. "Eligible Employee" means an Employee (i) who is within an employment classification established by the Board, (ii) who is not a Leased Employee, (iii) who is not eligible to participate in the "County of Los Angeles Savings Plan," as set forth in Chapter 5.26 of the Los Angeles County Code, and (iv) to whom eligibility to participate in this Plan has been extended pursuant to a memorandum of understanding or other authorization approved by the Board.

13. "Eligible Retirement Plan" means: (i) an individual retirement account under Code section 408(a); (ii) a "conduit" individual retirement account described in Code section 408(d)(3)(A)(ii); (iii) an individual retirement annuity under Code section 408(b); (iv) an annuity plan described in Code section 403(a); (v) a plan which is qualified under Code section 401(a); (vi) a tax-sheltered annuity contract under Code section 403(b); and (vii) 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.

14. "Eligible Rollover Distribution" means any distribution of all or part of the balance of an Account to the credit of the Participant in an Eligible Retirement Plan, except for the following:

a. 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;

b. any distribution to the extent such distribution is required by Code section 401(a)(9);

c. any distribution which is (a) a return of a portion or all of a Termination Contribution as provided 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 dividend on employer securities described in Code section 404(k), (c) the P.S. 58 cost of life insurance coverage, or (d) any other similar item designated by the Commissioner of Internal Revenue.

15. "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 22 of this Part. 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.

16. "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. 415 Compensation includes:

a. any elective "tax deferred contributions" under the County of Los Angeles Savings Plan and any other County contribution under a cash or deferred arrangement for the year;

b. any County contributions to purchase an annuity contract under Code section 403(b) under a salary reduction agreement;

c. any other elective deferral (as defined in Code section 402(g)(3));

d. any amount that 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, and any amount that would be available in cash to an Employee under the Choices, Options, Flexible Benefit Plans or Mega-Flex Plans (or a successor plan) if he or she waived health coverage under such plan;

e. any amount that is contributed to the County of Los Angeles Deferred Compensation and Thrift Plan, the County of Los Angeles Pension Savings Plan or another plan sponsored by the County at the election of the Employee and which is not includible in gross income under Code section 457; and

f. any amounts that are not includible in the gross income of the Employee by reason of Code section 132(f)(4).

17. "Investment Fund" means any investment vehicle in which the Plan assets are invested. Any such Investment Fund shall be consistent with any limitations on forms of investment imposed under applicable State law.

18. "Investment Manager" means a person or entity appointed by the Administrative Committee or by the Trustee if, under the Trust Agreement, the Trustee is a Discretionary Trustee, who, with respect to an Investment Fund, has the discretion to determine which assets in such Fund shall be sold (or exchanged) and what investments shall be acquired for such Fund or a person or entity that provides investment services to an investment company registered under the Investment Company Act of 1940. Any Investment Manager must be either registered as an investment adviser under the Investment Advisers Act of 1940, a bank as defined thereunder or an insurance company qualified to manage, acquire or dispose of Plan assets under the laws of more than one state, provided, however, that this requirement shall not apply to the County Treasurer and, with respect to an Investment Fund that provides for investments in securities issued by an investment company registered under the Investment Company Act of 1940, the requirements of that act shall control. Any Investment Manager shall accept such appointment in writing and shall constitute a fiduciary with respect to the investment of Plan assets held in the particular Investment Fund for which the appointment applies, unless such person would not be treated as investing assets of the Plan if the Plan was covered by the Employee Retirement Income Security Act of 1974, as amended.

19. "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.

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

21. "LA Superior Court" means the Superior Court of California, County of Los Angeles.

22. "Leased Employee" means any person described in Code section 414(n)(2), who shall be treated as an Employee solely for the purposes of the plan qualification requirements listed in Code section 414(n)(3), unless the safe harbor set forth in Code section 414(n)(5) applies.

23. "Participant" means an Eligible Employee who has become and continues to be a Participant in the Plan in accordance with the provisions of Part 2.

24. "Participating Employer" means (a) any governmental entity of which the Board is the governing body, and (b) the LA Superior Court to the extent participation in the Plan by the LA Superior Court is authorized by state law or rules of court and unless the LA Superior Court has elected not to participate in the Plan.

25. "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, that satisfies the requirements specified in Section 5.18.080.

26. "Plan" means the County of Los Angeles Termination Pay Pick Up Plan, the terms and provisions of which are herein set forth, as the same may be amended, supplemented or restated from time to time.

27. "Plan Year" means a calendar year.

28. "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.

29. "Qualified Plan" means an employee benefit plan that is qualified under section 401(a) of the Code.

30. "Represented Employee" means any Employee in a bargaining unit represented by an employee organization certified by the County Employee Relations Commission.

31. "Required Beginning Date" means the date described in Section 5.18.180 of the Plan.

32. "Severance Date" means the date upon which an Eligible Employee terminates employment with the County for any reason.

33. "Termination Pay" means 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 County Code Section 6.18.070 (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).

34. "Termination Pay Contribution" means a contribution made by an Eligible Employee pursuant to an Payroll Deduction Authorization Agreement, as specified in Section 5.18.080.

35. "TPA" means a third-party administrator who has entered into a contract with the County to provide record-keeping services, employee communication services, claims administration services or other similar services. Alternatively, the County may act as the "TPA" to provide these services.

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

37. "Trial Court Employee" means a "trial court employee," as defined under the Trial Court Act, who is an Employee of the LA Superior Court.

38. "Trust Agreement" means the agreement(s) executed by the County and a Trustee which establishes either a trust fund or custodial account to provide for the investment, reinvestment, administration and distribution of contributions made under the Plan and the earnings thereon, as amended from time to time.

39. "Trust Fund" means the assets of the Plan held by the Trustee pursuant to the Trust Agreement.

40. "Trustee" means the one or more persons or entities who have entered into a Trust Agreement as a trustee or custodian, and any duly appointed successor. For these purposes, the custodian of any custodial account created for the purposes of holding Plan assets must be a bank, as described in Code section 408(n), or a person who meets the nonbank trustee requirements of paragraphs (2) through (6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of nonbank trustees. To the extent consistent with applicable law, the County Treasurer may serve as the Trustee. The Trustee may be a Discretionary Trustee.

41. "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.

5.18.030. Special Rules Regarding Participating Employers.

A. Generally. Notwithstanding the general definition of County in Part 1, Section 5.18.020, with regard to rights and obligations related to the design, amendment, termination or administration of the Plan, including but not limited to those set forth in Parts 7, 8 and 10, the term "County" shall refer exclusively to the County of Los Angeles, and each Participating Employer shall be bound by the actions of the County of Los Angeles.

B. LA Superior Court. If the LA Superior Court does not elect out of participating in this Plan, it will be treated as a separate Participating Employer in the Plan and any Payroll Deduction Authorization Agreement executed by a Trial Court Employee shall be between such Trial Court Employee and the LA Superior Court, and any Termination Pay Contribution made to the Plan on behalf of such Trial Court Employee shall be paid out of the budget of the LA Superior Court.

5.18.040. Construction.

A. Unless the context otherwise indicates, the masculine wherever used herein shall include the feminine and neuter, the singular shall include the plural and words such as "herein," "hereof," "hereby," "hereunder," and words of similar import refer to the Plan as a whole and not to any particular part thereof.

B. Where headings have been supplied to portions of the Plan they have been supplied for convenience only and are not to be taken as limiting or extending the meaning of any of its provisions.

C. Wherever the word "person" appears in the Plan, it shall refer to both natural and legal persons.

D. Except to the extent federal law controls, the Plan shall be governed, construed and administered according to the laws of the State of California. All persons accepting or claiming benefits under the Plan shall be bound by and deemed to consent to its provisions.

PART 2 PARTICIPATION

5.18.050. Commencing Participation.

An Eligible Employee shall become a Participant upon execution of a Payroll Deduction Authorization Agreement.

5.18.060. Duration of Participation.

After a Participant terminates employment with the County, he shall remain a Participant until his entire Account balance has been distributed; provided, however, that a Participant who is not entitled to a Termination Pay Contribution upon termination from employment with the County shall cease to be a Participant immediately upon such termination.

PART 3 TERMINATION PAY CONTRIBUTIONS

5.18.070. Amount of Contribution.

Subject to the limitations set forth in Section 5.18.110, an Eligible Employee may elect to have the County deduct a fixed percentage or dollar amount from his Termination Pay and contribute such fixed percentage or dollar amount to the Plan pursuant to a Payroll Deduction Authorization Agreement. The County shall pick up such contribution under Code section 414(h)(2).

5.18.080. Pick Up Requirements.

A. To make an election as provided in Section 5.18.070, an Eligible Employee shall enter into a Payroll Deduction Authorization Agreement in accordance with procedures established by the Administrative Committee.

B. The Payroll Deduction Authorization Agreement is binding and irrevocable upon execution. A Payroll Deduction Authorization Agreement is deemed executed on the date the completed, signed Agreement is filed with the County or its agent. Once executed, the Payroll Deduction Authorization Agreement may not be amended or revoked. An Eligible Employee who executes a Payroll Deduction Authorization Agreement shall thereafter have no option to receive in cash, or to otherwise direct the disposition of, the fixed percentage or dollar amount of his Termination Pay that he has elected to contribute to the Plan as a Termination Pay Contribution. The Plan shall not accept contributions from any source other than those deducted from Termination Pay.

This Plan does not restrict the Participant's ability to utilize any accrued benefits by taking vacation, sick or other leave while employed with the County.

C. Except as otherwise provided in this Section 5.18.080, a Payroll Deduction Authorization Agreement must be executed at least 90 days prior to the Participant's Severance Date. The Payroll Deduction Authorization Agreement is effective upon execution. The Payroll Deduction Authorization Agreement, however, shall not apply to any Termination Pay that becomes payable in the event the Eligible Employee's Severance Date is less than 90 days after the Payroll Deduction Authorization Agreement is executed, unless the Eligible Employee experiences an Involuntary Early Severance. If the Participant's Severance Date occurs later than originally designated, the Payroll Deduction Authorization Agreement will remain effective until his actual Severance Date.

D. If a Participant is rehired by the County after his Severance Date, any Termination Pay Contribution made on his behalf to the Plan shall remain in the Plan unless and until it is distributed in accordance with Part 6, and the cashed out accrued benefits attributable thereto shall NOT be restored for any reason.

E. Each Eligible Employee shall be eligible to make only one election to have Termination Pay picked up within the meaning of Code section 414(h)(2). Accordingly, an Eligible Employee may not execute more than one Payroll Deduction Authorization Agreement. If the Eligible Employee intends to have a portion of his Termination Pay picked up and contributed to purchase service with LACERA and a portion of his Termination Pay picked up and contributed to the Plan, he must execute a single Payroll Deduction Authorization Agreement covering both elections. If the Eligible Employee elects to contribute Termination Pay both to LACERA and to the Plan, his Termination Pay will be picked up and contributed first to LACERA, in satisfaction of the election to purchase additional retirement credit under the Payroll Deduction Authorization Agreement, and second to the Plan, in satisfaction of the election to contribute to the Plan under the Payroll Deduction Authorization Agreement. In no

event, will the Termination Pay Contribution under the Plan exceed the amount of Termination Pay available after deduction therefrom to make contributions to LACERA in accordance with the Payroll Deduction Authorization Agreement.

F. Termination Pay Contributions made pursuant to this Part 3., although designated under the Plan as employee contributions, shall be paid by the County in lieu of employee contributions.

G. The Payroll Deduction Authorization Agreement shall be signed by the employee. It shall provide that the employee authorizes the appropriate deduction from Termination Pay for the purposes of having it picked up and contributed to the Plan by the County, and that the employee understands and acknowledges the requirements and limitations of this Section 5.18.080.

H. As a condition to entering the Payroll Deduction Authorization Agreement, the County may require an employee to execute a release from liability for any adverse consequences that may result if the Internal Revenue Service or a court determines that a contribution to the Plan pursuant to a Payroll Deduction Authorization Agreement is not a picked up contribution within the meaning of IRC Section 414(h)(2), or that the Plan is not a Qualified Plan.

5.18.090. Payment to Trustee.

Each Termination Pay Contribution shall be paid by the County to the Trustee within a reasonable period after a Participant's Severance Date, but in no event later than the last day of the month following the month containing the Participant's Severance Date or the final calculation of the amount of the Termination Pay by the County, whichever is later.

5.18.100. Exclusive Benefit.

A. The Plan assets shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan in accordance with Part 7.

B. If a Termination Pay Contribution is made by the County due to a mistake of fact, such contribution 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 section 401(a) for a qualified plan, any Termination Pay Contributions attributable to the period for which it is determined not to be so qualified shall, at the direction of the Administrative Committee, be returned to the Participant.

5.18.110. Code Section 415(c) Limitations.

A. Definitions. For the purposes of this Section, the following definitions apply:

1. "Annual Additions" means the sum of the following amounts:

a) all contributions made by the County that are allocated to a Participant's account under a qualified defined contribution plan maintained by the County;

b) all contributions made by the Participant to a qualified defined contribution plan maintained by the County;

c) all forfeitures allocated to a Participant's account under a qualified defined contribution plan maintained by the County, and

d) any amount allocated to an individual medical benefit account (as defined in Code section 415(l)(2)) of a Participant that is part of a pension annuity plan

maintained by the County (except that the 100 percent of 415 Compensation limit does not apply to such an individual medical benefit account).

2. "Limitation Year" means the twelve consecutive month period used by a qualified plan for the purposes of computing the limitations on benefits and annual additions under Code section 415. The Limitation Year for this Plan is the Plan Year (calendar year).

B. Limit on Annual Additions. Notwithstanding any other provisions of the Plan, the Annual Addition for a Participant for any Limitation Year shall not exceed the lesser of (i) \$40,000, as adjusted after 2002 for increases in the cost-of-living under Code section 415(d), or (ii) 100 percent of the Participant's 415 Compensation for the Plan Year. The limits set forth in this subsection constitute the "Contribution Limit" for such Limitation Year.

C. Excess Annual Additions. If a Participant's Annual Additions would exceed the limitations of subsection 5.18.110B for a Limitation Year, as soon as practicable following the Limitation Year a portion of the Termination Pay Contribution made for such Eligible Participant for such Limitation Year (together with gains attributable thereto) shall be treated as an Employee contribution not eligible to be picked up under Part 3 and returned to him as a corrective disbursement to the extent necessary to satisfy the limitations under subsection 5.18.110.B.

If the Participant participates in more than one defined contribution plan maintained by the County, the Termination Pay Contribution shall in all cases be treated as if it was made after any Annual Additions to any other plan and any reduction of Excess Annual Additions will be made first from this Plan in accordance with subsection 5.18.110.B

D. Aggregation of Plans. For the purposes of applying the limitations set forth in this Section 5.18.110, all qualified defined contribution plans (whether or not terminated) ever maintained by the County shall be treated as one defined contribution

plan.

PART 4 PARTICIPANTS' ACCOUNTS: VESTING

5.18.120. Vesting.

The Trustee shall maintain an Account for each Participant. The Account of each Participant shall be credited with earnings thereon, if any, and shall be credited or debited, as the case may be, with the net amount of any gains or losses which may result from the investment of the Account in the Investment Fund. The County, the Administrative Committee and the Trustee shall not be liable for any losses on any investment credited to any Account. The interest of each Participant in his Account will be 100 percent vested and nonforfeitable at all times.

PART 5 INVESTMENTS

5.18.130. Investment of Funds.

A. Trust Fund. Notwithstanding any contrary provision of the Plan, in accordance with section 401(a) of the Code, all contributions to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in trust and/or in one or more custodial accounts for the exclusive benefit of Participants and Beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the State of California, and any custodian of a custodial account under the Plan shall be a bank, as described in Code section 408(n), or a person who meets the nonbank trustee requirements of Paragraphs (2) through (6) of section 1.408-2(e) of the Income Tax Regulations relating to the use of nonbank trustees.

B. Investment of Trust Assets. If the Trustee is a Discretionary Trustee, it shall invest the assets of the Trust Fund in one or more Investment Funds as it may determine in its discretion. If the Trustee is not a Discretionary Trustee, it shall invest the assets of the Trust Fund as instructed by the Administrative Committee or its Agent in one or more Investment Funds as the Administrative Committee or its Agent in its

discretion may determine.

5.18.140. Trust Fund Allocation and Valuation.

A. Allocation.

1. If the Trustee is not a Discretionary Trustee, the assets credited to each Participant's Account shall be allocated among the Investment Funds in accordance with the investment option or options chosen by the Administrative Committee effective no later than the first business day following the date on which the Trustee or its Agent has received appropriate instructions, or such later date as is commercially reasonable under the circumstances, unless otherwise provided by the Administrative Committee.

2. As of each Valuation Date, the net gain or loss of each Investment Fund, determined in accordance with subsection 5.18.140.B of this Part, shall be allocated by the Trustee or its Agent in accordance with the instructions received by the Trustee from the TPA to the Account of Participants in such Investment Funds in proportion to the amounts of such Account invested in such Investment Fund on such Valuation Date, exclusive of amounts to be credited but including amounts (other than the net loss, if any, determined pursuant to subsection 5.18.100.B) to be debited to such Account as of such Valuation Date.

B. Valuation.

1. As of the close of business each Valuation Date, the Administrative Committee, its Agent or the Trustee, if it is a Discretionary Trustee, shall determine or cause to be determined the value of each Investment Fund. The Administrative Committee, its Agent or such Discretionary Trustee 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 Investment Managers, the County Treasurer, custodians or other entities authorized to provide valuation data. If the

Trustee is not a Discretionary Trustee responsible for valuation, the Administrative Committee or its Agent shall communicate such valuation to the Trustee.

2. Each such valuation shall be made on the basis of the net gain or loss to each such Investment Fund between the current Valuation Date and the last preceding Valuation Date. The net gain or loss of an Investment 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 Fund in accordance with the terms of the Plan and the Trust Agreement. The transfer of funds to or from an Investment Fund, the allocation of Termination Pay Contributions, and payments, distributions and withdrawals from an Investment Fund to provide benefits under the Plan for Participants or Beneficiaries shall not be deemed to be income, expenses or losses of the Investment Fund. A similar valuation shall be made at any other time the 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 the Code and California law, (a) adopt, or instruct a Discretionary Trustee to 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, or instruct a Discretionary Trustee to 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. The reasonable and equitable decision of the Administrative Committee or a Discretionary Trustee, as applicable, 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.

C. No Guarantee Against Loss. The County, the Board, the Administrative

Committee, the TPA and the Trustee do not guarantee in any manner the Investment Funds or any part thereof against loss or depreciation. All persons having an interest in the Investment Funds shall look solely to such Funds for payment with respect to such interest.

PART 6 DISTRIBUTIONS

5.18.150. Distribution on Termination of Employment.

A. A Participant who terminates employment with the County for any reason is eligible to receive the entire balance in his Account in a single lump-sum payment. To obtain a distribution under the Plan, such Participant shall submit an application for benefits to the Administrative Committee, furnishing such information as the Administrative Committee or its duly authorized Agent may require. All distributions hereunder shall be made as soon as administratively practicable after the Participant's application is filed and approved by the Administrative Committee.

B. Notwithstanding subsection A of this Section, if a Participant's Account does not exceed \$1,000 at the time of his termination of employment with the County, the Administrative Committee may instruct the Trustee to distribute the entire Account balance in a single lump-sum payment as soon as administratively practicable without the Participant's consent.

C. Notwithstanding any provision of the Plan to the contrary, distributions will be made by the Required Beginning Date in accordance with Code section 401(a)(9) and the regulations thereunder and Section 5.18.180. Such provisions shall override any inconsistent distribution election.

D. A Participant has not terminated employment with the "County" for the purposes of this Section when he or she moves to another employer whose Eligible Employees also participate in the Plan.

5.18.160. Distributions on Death.

A. Upon the Participant's death prior to distribution, the Participant's Beneficiary is eligible to receive the entire balance in the Participant's account in a single lump-sum payment. To request a distribution under the Plan, the Beneficiary shall submit an application for benefits to the Administrative Committee, furnishing such information as the Administrative Committee or its duly authorized Agent may require. Distributions hereunder shall be made as soon as administratively practicable after the Beneficiary's application is filed pursuant to this subsection and approved by the Administrative Committee.

B. Notwithstanding subsection A of this Section, even if a Beneficiary does not file an application, the Administrative Committee may distribute the Participant's Account balance to the Beneficiary, without his or her consent, as soon as administratively practicable following the notice to the Administrative Committee of the Participant's death.

C. Notwithstanding any provision of the Plan to the contrary, distributions will be made by the Required Beginning Date in accordance with Code section 401(a)(9) and the regulations thereunder and Section 5.18.18. Such provisions shall override any inconsistent distribution election.

5.18.170. Valuation Date for Distribution Purposes.

A Participant's Account balances will be valued as of the Valuation Date immediately preceding the date of distribution.

5.18.180. Code Section 401(a)(9) Minimum Distribution Requirements.

A. Generally. Notwithstanding any provision of the Plan to the contrary, all distributions must comply with Code section 401(a)(9) and the Treasury Regulations thereunder. The only permissible distribution option under this Plan is a lump-sum

distribution and, thus, the Participant's entire account balance must be distributed no later than the Required Beginning Date, as defined below.

B. Definitions. For the purposes of this Section, the following terms, when used with initial capital letters, shall have the following respective meanings:

1. "Designated Beneficiary": The person who is designated as the Beneficiary as defined in Part 1, Section 5.18.020 and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4 of the Treasury Regulations.

2. "Required Beginning Date": Except as otherwise described in this Section, the Required Beginning Date of any Participant shall be the April 1 of the calendar year following the later of (a) the calendar year he terminates employment or (b) the calendar year he attains age 70 1/2. If the Participant dies before distributions begin, the Required Beginning Date is December 31 of the calendar year containing the fifth anniversary of the Participant's death.

5.18.190. Loans Prohibited.

Participants may not borrow any amounts from their Accounts.

5.18.200. Lost Participants.

If the Participant or his or her Beneficiary cannot be located within four years of the date the Participant's interest under the Plan is first payable, the entire balance in his Account shall be forfeited; provided, however, that the amount so forfeited shall be reinstated as of the date of the subsequent filing of an application for benefits under the Plan. Amounts restored to lost Participant's Account in accordance with this Section shall be restored out of forfeitures as provided in Section 5.18.210. The restoration of a lost Participant's Account balance will not be treated as an Annual Addition. Payment

of the restored amount shall be paid in a lump-sum benefit no later than 60 days after the lost Participant's application is approved by the Administrative Committee.

5.18.210. Application of Forfeitures.

The amount of a Participant's Account which is forfeited in accordance with Section 5.18.200 shall be placed in one or more forfeiture accounts held in the Trust Fund and applied to restore the accounts of lost Participants who have filed an application for benefits that has been approved by the Administrative Committee, if any. Earnings on the forfeiture account held in the Trust Fund shall be used to reduce administrative expenses of the Plan in accordance with Part 7, Section 5.18.300.

5.18.220. Rollovers.

A. 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 an Eligible Retirement Plan; provided, however, that an eligible deferred compensation plan described in Code section 457(b), which is maintained by an eligible employer described in Code section 457(e)(1)(A), may receive an Eligible Rollover Distribution from the Plan only if it provides for separate accounting as required under Code section 402(c)(10).

2. In order for a transfer to be made with respect to a Participant under this Section, (a) the Participant must designate in writing the Eligible Retirement Plan to receive the transferred amounts; (b) the Participant must timely provide the Administrative Committee with adequate information to enable the Administrative Committee to determine that the transferee plan is an Eligible Retirement Plan described above; (c) the entire amount to be transferred must be an Eligible Rollover Distribution; and (d) the Participant must have received proper notice in accordance with Code section 402(f).

3. A Participant's surviving spouse who becomes eligible to receive a distribution on the Participant's death under Section 5.18.160, or an Alternate Payee who is a Participant's spouse or former spouse who becomes eligible to receive a distribution under Section 5.18.360 shall be treated as the Participant for purposes of this Section.

B. Rollovers to the Plan Not Permitted.

1. The Plan shall not accept any cash or property that constitutes an Eligible Rollover Distribution from an Eligible Retirement Plan.

PART 7 ADMINISTRATION OF THE PLAN AND TRUST AGREEMENT

5.18.230. Responsibility for Administration.

As Administrator, the Administrative Committee shall have sole and exclusive responsibility for the administration of the Plan, including but not limited to the preparation and delivery to the Los Angeles County Board of Supervisors, Participants, Beneficiaries and governmental agencies of all information, descriptions and reports required by applicable law. Each fiduciary shall have such powers, duties and authorities as shall be specified in the Plan or Trust Agreement. The Administrative Committee shall also be responsible for contracting with any private firm selected by the Committee according to County policies and procedures to provide services related to the Plan

5.18.240. Administrative Committee Procedure.

A. The chairman of the Administrative Committee shall be the Chief Administrative Officer of the County. The chairman of the Administrative Committee shall select a secretary and may select such other officers as are needed from time to time. The members of the Administrative Committee or their designated representatives may authorize one or more of their number or any duly appointed Agent

or County employee to carry out action that may be taken by the Administrative Committee.

B. The Administrative Committee shall hold meetings at least quarterly or more often at the call of the chairman, provided that it shall meet jointly with the administrative committee for the County of Los Angeles Deferred Compensation and Thrift Plan. A majority of the members of the Administrative Committee shall constitute a quorum and all action taken by the Administrative Committee shall be by majority vote at a meeting at which a quorum is present. The Administrative Committee shall maintain written minutes of its meetings.

5.18.250. Authority.

A. In addition to responsibilities and powers set out elsewhere in the Plan, the Administrative Committee shall have the following powers, which may be delegated to one or more Agents or the County:

1. The Administrative Committee shall have sole and exclusive authority to interpret where necessary the provisions of the Plan and determine the rights and benefits of Participants and other persons under the Plan. Such authority and power shall include the following: (i) resolving all questions relating to the eligibility of Employees to become Participants; (ii) determining eligibility for and the amount of benefits payable to Participants or their Beneficiaries, and determining the time and manner in which such benefits are to be paid in accordance with the terms of the Plan; (iii) authorizing and directing all disbursements by the Trustee from the Trust Fund; (iv) construing and interpreting the Plan and the Trust Agreement and adopting rules for administration of the Plan and the Trust Agreement which are not inconsistent with the terms of such documents; and (v) resolving all questions of fact with respect to any matter arising in connection with the administration of the Plan.

2. The Administrative Committee will establish rules and procedures to be followed by Participants and Beneficiaries in filing applications for benefits, in furnishing and verifying proofs that are satisfactory to the Administrative Committee for the determination of age, marital status, termination of service, Beneficiary designation, and in any other matters required to administer the Plan.

3. The Administrative Committee may modify any notice period required by the Plan or designate any County officer to serve as the recipient of any form or notice that has to be filed under the Plan.

4. The Administrative Committee shall instruct the Trustee as to the benefits to be paid hereunder and shall furnish the Trustee with any further information reasonably required by it for the purpose of distributing such benefits and making investments in or withdrawals from one or more of the Investment Funds.

5. The Administrative Committee may contract with one or more Investment Managers, or enter one or more investment arrangements, with respect to the Investment Funds.

6. The Administrative Committee shall also have the authority to contract with one or more private firms for services related to the Plan, consistent with Section 44.7 of the Los Angeles County Charter, Part 3 of Chapter 2.104 of this Code, State and County contracting policies and Chapter 7 of Title 9 of the California Government Code (Section 87000, et seq.).

7. Subject to the provisions of Section 5.18.260 and Section 5.18.320, all decisions of the Administrative Committee as to the facts of any case and the application thereof to any case, as to the interpretation of any provision of the Plan or its application to any case, and as to any other interpretive matter or other determination or question related to the Plan or its administration shall be final and

conclusive, to the extent permitted by law, as to all interested persons for all purposes of the Plan.

B. The Administrative Committee may assign additional duties and responsibilities to its members, and, with the exception of those duties expressly reserved to the County, may from time to time reassign any of the duties and responsibilities set forth in this Section as it deems appropriate.

C. The County, as Plan sponsor, shall be responsible for contracting with the Trustee(s) and the TPA.

D. The County Treasurer is responsible for recommending to the Administrative Committee contracts for the guaranteed investment contracts or bank deposit funds that comprise the fixed income Investment Funds, and for administering all investment contracts.

E. The CAO shall be responsible for recommendations to the Board on all matters involving the appointment or removal of the Trustee, the County budget, employee relations and County policy relating to the Plan. The CAO also shall be responsible for recommendations to the Administrative Committee concerning Plan operations and for the conduct of certain business operations on the Administrative Committee's behalf, including the review of Plan expenses to determine that they do not exceed approved limits, the purchase of fiduciary liability insurance, the administration of the Trust Agreement, TPA contracts and any communication regarding Plan provisions or services contracts regarding the same.

F. The Director of Personnel for the County shall be responsible for all Participant contact and services associated with the Plan.

G. The County Counsel shall provide, or contract for, all legal advice or representation required by the Administrative Committee and/or the County and its officers and employees in connection with their administration of the Plan.

H. The County Auditor-Controller shall be responsible for recommending a Plan auditor, administering auditor contracts, writing the specifications for Plan audits, supervising Plan audits, processing of payroll deferrals and County contributions, maintaining appropriate County accounting records, transferring of funds and account allocation information to the TPA, Trustees or Investment Managers, and periodic reviews of the financial integrity of the Plan.

I. Each of the above County officers may discharge any duty required by this Section through any designated deputy or assistant or contractor.

J. The Trustee has only those duties set forth in the Trust Agreement. The Trust Agreement is hereby incorporated in the Plan by reference.

K. The County expressly reserves to itself the duties set forth in subsection C, the first sentence of subsection E and subsections G and H of this Section.

5.18.260. Revocability of Action.

Any action taken by the Administrative Committee with respect to the rights or benefits under the Plan of any Participant or Beneficiary shall be revocable by the Administrative Committee as to payments, distributions or deliveries not theretofore made hereunder pursuant to such action. Notwithstanding Section 5.18.330, appropriate adjustments may be made in future payments or distributions to a Participant or Beneficiary to offset any excess payment or underpayment theretofore made hereunder to such Participant or Beneficiary.

5.18.270. Employment of Assistance.

The Administrative Committee may employ such expert communication and enrollment, legal, accounting, investment, trustee, custody, or other assistance as it deems necessary or advisable for the proper administration of the Plan and Investment Funds.

5.18.280. Uniform Administration of Plan.

All action taken by the Administrative Committee under the Plan shall treat all persons similarly situated in a uniform and consistent manner.

5.18.290. Payment of Benefits.

All payments of benefits provided for by the Plan (less any deductions provided for by the Plan) shall be made solely out of the Investment Funds in accordance with instructions given to the Trustee by the Administrative Committee, and the County shall not be otherwise liable for any benefits payable under the Plan.

5.18.300. Expense Charges to Plan.

A. Prior to the beginning of each County fiscal year, the Administrative Committee shall determine the amount of annual fees that it reasonably estimates will be necessary to properly administer the Plan during such fiscal year. For purposes of its determination, the Administrative Committee shall take into account (i) direct, additional County costs expected to be incurred as a result of County employees performing the functions defined in Part 7 and (ii) the cost of contractors that provide services to the Plan, including, without limitation, fiduciary and liability insurance coverage, communication consultants, investment advisors, auditors and legal services, pursuant to contracts that are approved by the Board or the Administrative Committee. The expenses subject to this subsection A shall not include: (1) TPA fees, or (2) Trustee fees and investment management and custodial fees incident to the Investment Funds, all of which are addressed in subsection B.

1. The expenses incurred as a result of County employees performing the functions defined in Part 7 shall not exceed the amount approved by the Board of Supervisors in the County budget.

2. Expenses incurred as a result of contractors performing the Plan functions described in this Part 7, and the cost of fiduciary and liability insurance, are limited by the contract or contracts approved by the Administrative Committee or the Board.

3. The annual fees approved by the Administrative Committee may be charged through the Trustee or reimbursed from Plan assets and paid to the County.

4. The estimated annual fees for the Plan approved by the Administrative Committee pursuant to this subsection will be charged to each Participant's account on a per-capita basis. The per-Participant, annual charge will be determined by dividing the estimated annual fees for the Plan by the number of Participants on the last day of the month prior to the beginning of the fiscal year for which the fees are being determined. The per-Participant annual charge will be divided by 12 and billed monthly to each Participant's account during the fiscal year. A Participant will be billed only for months in which he or she has an account balance in the Plan. The monthly charges will appear on the Participant's quarterly statement.

5. Employees who become Participants in the Plan during the fiscal year will be charged the same monthly per-Participant charge determined prior to the beginning of the fiscal year by the Administrative Committee.

6. Until such time as the Administrative Committee approves a new annual fee, Participants will be charged the same monthly per-Participant charge as previously set by the Administrative Committee.

7. The Administrative Committee may assess an emergency surcharge to Participant's accounts if it reasonably determines that actual Plan expenses authorized by the subsection will exceed the estimated annual fees determined prior to the beginning of the fiscal year.

8. Expenses incurred by members of the Administrative Committee as a result of performing their duties under the Plan will be charged through the Trustee or reimbursed from Plan assets and paid to the member incurring such expense. Such expenses may include the costs of educational materials or classes relating to plan administration or investments if the Administrative Committee determines that such costs are reasonable and necessary.

B. TPA, Trustee fees, and investment management and custodial fees incident to the Investment Funds are limited by the contract or contracts approved by the Administrative Committee or the Board. TPA and Trustee fees will be charged through the Trustee or reimbursed from Plan assets and will be allocated to the individual Participants' accounts and reflected on quarterly statements. Investment management and custodial fees incident to the Investment Funds shall be periodically charged to the appropriate Investment Fund.

C. In the event that the Plan accumulates (i) fees in excess of actual administrative expenses, or (ii) unallocated earnings from Plan operations, the Administrative Committee shall allocate excess fees and earnings first by establishing a reserve for contingencies and payment of planned obligations not to exceed 100% of the aggregate total annual County fees, TPA fees, and Trustee fees charged to Participants the preceding fiscal year, and then by allocating any remainder by reducing TPA fees charged to Participants by a method determined by the Administrative Committee.

5.18.310. Compliance with Laws.

The Administrative Committee shall have the duty to make changes in the administration of this Plan which are necessary to comply with federal or State of California laws.

5.18.320. Claims Procedures.

A. Initial Claim. Any Participant or Beneficiary who believes that he or she is entitled to receive a benefit under the Plan must file an application with the Administrative Committee as provided in Part 6.

B. Appeal. If an application for benefits is denied, the Participant or Beneficiary will be advised of his or her right to appeal the denial to the Administrative Committee. The Participant or Beneficiary may appeal the denial of his or her application by filing with the Administrative Committee a written request for review of such claim stating the specific facts supporting his or her claim and specifying the remedy sought. The appeal shall be reviewed by Agents of the Administrative Committee. If the Agents determine that the claim is valid, benefits shall be distributed as soon as administratively feasible in accordance with the terms of the Plan. If, however, such Agents recommend denial of the claim, such appeal shall be reviewed by the Administrative Committee at its next open meeting. The determination of the Administrative Committee as to the denial of a claim on appeal shall be final and binding to the extent permitted by law.

PART 8 FIDUCIARY RESPONSIBILITY

5.18.330. Responsibilities Generally.

The Plan fiduciaries shall have only such powers, duties, responsibilities and authorities as are specified in the Plan or the Trust Agreement. The Board has the responsibility for appointing, employing or removing any Plan Trustee, for approving certain expenses charged to the Plan in accordance with Section 5.18.300, and for other duties as set forth in the Plan. The Administrative Committee, as Plan Administrator, is a Plan fiduciary with the responsibility and discretionary authority for interpreting the terms of the Plan, for administering the Plan in accordance with its terms, for appointing or removing any Investment Manager and entering into investment arrangements with respect to the Investment Funds (unless a Directed Trustee has the

responsibility and discretionary authority to appoint and remove Investment Managers and enter into investment arrangements), for incurring or approving certain expenses and charging them to the Plan in accordance with Section 5.18.300, and for other duties as set forth in the Plan.

The Administrative Committee and all other persons with discretionary control respecting the operation, administration, control or management of the Plan or the Trust Fund:

(1) will perform their duties under the Plan and the Trust Agreement for the exclusive benefit, and solely in the interest, of Participants and their Beneficiaries;

(2) shall be governed by, and adhere to, Chapter 7 of Title 9 of the California Government Code (Section 87000, et seq.), including but not limited to the disclosure and disqualification requirements and the limitations on gifts and honorariums set forth therein; and

(3) shall act in accordance with the Uniform Prudent Investor Act and the other provisions of California Trust Law.

Provisions (2) and (3) in the previous sentence shall not apply to a Plan fiduciary to the extent such provisions conflict with, or another standard of fiduciary conduct is expressly provided in, the terms of the applicable Trust Agreement, TPA contract or Investment Manager contract negotiated with such fiduciary.

5.18.340. Immunities.

Except as otherwise provided by the Trust Agreement:

A. No fiduciary shall be liable for any action taken or not taken with respect to the Plan or the Trust Agreement except for his or her own negligence or willful misconduct except as otherwise provided in subsection B;

B. A fiduciary shall be liable for a breach of duty committed by another fiduciary (a "co-fiduciary") only under the following circumstances: (a) where the fiduciary participates in the breach of duty committed by a co-fiduciary, (b) where the fiduciary improperly delegates its duties to a co-fiduciary, (c) where the fiduciary approves, knowingly acquiesces in, or conceals a breach of duty committed by a co-fiduciary, (d) where the fiduciary negligently enables a co-fiduciary to commit a breach of duty, or (e) where the fiduciary fails to take reasonable steps to compel a co-fiduciary to redress a breach of duty if the fiduciary knows of, or has information from which he or she reasonably should have known of, the breach of duty;

C. The County and each officer and Employee thereof, the Administrative Committee and each member thereof, and any other person to whom the County or Administrative Committee delegates (or the Plan or Trust Agreement assigns) any duty with respect to the Plan or the Trust Agreement, may rely and shall be fully protected in acting in good faith upon the advice of counsel, who may be counsel for the County, upon the records of the County, upon the opinion, certificate, valuation, report, recommendation, or determination of the third-party administrator, the Trustee, and Investment Manager, the County Treasurer or of the County Auditor-Controller, or upon any certificate, statement or other representation made by or any information furnished by an Employee, a Participant, a Beneficiary or the Trustee concerning any fact required to be determined under any of the provisions of the Plan;

D. If any responsibility of a fiduciary is allocated to another person, then, except to the extent provided in subsection B, such fiduciary shall not be responsible for any act or omission of such person in carrying out such responsibility; and

E. No fiduciary shall have the duty to discharge any duty, function or responsibility which is assigned by the terms of the Plan or Trust Agreement or delegated pursuant to the provisions of Part 7, to another person.

PART 9 MISCELLANEOUS

5.18.350. Nonalienation.

To the extent permitted by law and except as otherwise provided in the Plan, no right or interest of any kind of a Participant or Beneficiary hereunder shall be transferable or assignable by the Participant or Beneficiary, nor shall any such right or interest be subject to alienation, anticipation, encumbrance, garnishment, attachment, execution or levy of any kind, voluntary or involuntary.

5.18.360. Rights of an Alternate Payee Under a QDRO.

A. Notwithstanding Section 5.18.350 of this Part, an Alternate Payee shall have the right to make a claim for any benefits awarded to the Alternate Payee pursuant to a QDRO as provided in this Section. If an Alternate Payee is awarded a specified interest in the Account of the Participant pursuant to a QDRO, such interest of the Alternate Payee shall be segregated and separately accounted for by the Trustee in the name and for the benefit of the Alternate Payee.

B. Upon receipt of a domestic relations order, or, if earlier, notice that a domestic relations order may be sought, the Administrative Committee shall suspend distributions from the Participant's Account, and shall take steps to ensure that the Participant and each Alternate Payee is aware of the order or proposed order and the suspension of distributions from the Participant's Account. Moreover, the Administrative Committee shall determine, within a reasonable period after receipt of such order, whether such order is a QDRO. If the order is determined to be a QDRO, the Alternate Payee's interest under such order shall be segregated and/or distributed in accordance with the QDRO and this Section. If the order is determined not to be a QDRO, and the domestic relations order is not modified as necessary to constitute a QDRO within a reasonable period of time after such determination, the suspension of distributions from the Participant's Account shall be discontinued. If an order is not received within a reasonable period of time after the County has been notified that such an order is being

sought, the suspension of distributions from the Participant's Account shall be discontinued.

C. Distributions to the Alternate Payee shall be made in accordance with the QDRO provided that the QDRO does not conflict with the Plan's distribution provisions or the provisions of this Section 5.18.360. The Alternate Payee's interest may be distributed only in a lump-sum cash payment.

D. The Alternate Payee's interest specified in the QDRO shall be segregated and/or distributed from the Participant's Account, and the Investment Funds in which such Account are invested, on a pro rata basis.

E. Unless the QDRO provides otherwise, an Alternate Payee shall have the right, in the same manner as a Participant, to designate a Beneficiary, who shall receive benefits payable to the Alternate Payee in the event that all of the Alternate Payee's benefits have not been distributed at the time of the Alternate Payee's death. If the Alternate Payee does not designate a Beneficiary, or if the Beneficiary predeceases the Alternate Payee, benefits payable to the Alternate Payee which have not been distributed shall be paid to the Alternate Payee's estate. Any death benefits payable under this Section shall be paid in a lump sum as soon as administratively practicable after the Administrative Committee receives notice of the Alternate Payee's death, with or without the Beneficiary's consent.

5.18.370. Facility of Payment.

Whenever any Participant entitled to benefits under the Plan shall be under a legal disability or, in the sole judgment of the Administrative Committee, shall otherwise be unable to apply benefits to his own best interest and advantage, the Trustee, at the direction of the Administrative Committee, may make payments to the Participant's legal representative, and the decision of the Administrative Committee shall completely

discharge the liability of the Plan, the Administrative Committee, the County and the Trustee with respect to such benefits.

5.18.380. No Enlargement of Employment Rights.

The County by adopting the Plan and taking any action with respect to the Plan does not obligate itself to continue the employment of any Participant for any period.

5.18.390. Severability Provision.

If any provision of the Plan or the application thereof to any circumstance or person is invalid the remainder of the Plan and the application of such provision to other circumstances or persons shall not be affected thereby.

5.18.400. Military Service.

Notwithstanding any provisions of this Plan to the contrary, a contribution that is required with respect to a Participant's "qualified military service" will be provided in accordance with section 414(u) of the Code. "Qualified military service" means any service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

5.18.410. Electronic Media.

Notwithstanding any provision in this Plan to the contrary, including provisions requiring the use of a written instrument, the Administrative Committee may establish procedures for the use of electronic media in communications and transactions between the Plan or the Administrative Committee and Participants and Beneficiaries; provided, however, that any such procedures shall comply with applicable law. Electronic media may include, but are not limited to, e-mail, the Internet, intranet systems and automated, telephonic voice-response systems.

5.18.420. Temporary Suspension of Plan Provisions.

Notwithstanding any provision of the Plan to the contrary, during any conversion period (including but not limited to a change of Trustee, TPA or Investment Funds), in accordance with procedures established by the Administrative Committee, the Administrative Committee may temporarily suspend, in whole or in part, certain provisions of the Plan, which may include, but are not limited to, a Participant's right to enter into a Pickup Agreement or obtain a distribution from his Account.

PART 10 AMENDMENT OR TERMINATION

5.18.430. Right to Amend or Terminate.

A. Generally. Except as provided in subsection B, below, the Plan may be amended or terminated by the County at any time. No amendment or termination of the Plan shall reduce or impair the rights of any Participant or Beneficiary to the vested interest in their Accounts.

B. Represented Employees. Notwithstanding anything to the contrary in subsection A above, with respect to Represented Employees, the termination of the Plan or the amendment of any Plan provisions that are subject to negotiation shall be negotiated with representatives of the Represented Employees.

C. No Vested Contractual Rights. Because the Plan is subject to amendment and termination as set forth herein, neither participation in the Plan nor eligibility therefore shall entitle any employee to have the Plan or any specific terms thereof continued in the future.

5.18.440. Procedure for Termination or Amendment.

Any termination or amendment of the Plan pursuant to Section 5.18.430 shall be expressed in an instrument executed by the County on the order of its Board of Supervisors and filed with the Trustee, and shall become effective as of the date designated in such instrument or, if no date is so designated, on its execution.

5.18.450. Distribution Upon Termination.

In the event that the Plan is terminated by the County, the Trustee shall distribute each Participant's Account in a lump sum payment as soon as administratively practical to each Participant or his or her Beneficiary.

5.18.460. Failure to Qualify Under Code Section 401(a) or Satisfy Code Section 414(h)(2).

Notwithstanding anything else contained herein, the Plan shall be subject to the issuance by the Internal Revenue Service of (a) a determination or ruling to the effect that the Plan as adopted (or as modified by any amendment thereto made for the purpose of securing such determination or ruling) meets the applicable requirements of section 401(a) of the Code; and (b) a ruling that Termination Pay Contributions made pursuant to Payroll Deduction Authorization Agreements are "picked up" within the meaning of Code Section 414(h)(2). If the County does not receive such determinations or rulings within 12 months after it requests them or, if earlier, within 24 months after the Plan is adopted by the County, then, notwithstanding any other provision of the Plan, the County may elect to declare the Plan to be retroactively void as of the date of the amendment and restatement by giving written notice to the Trustee that no such Internal Revenue Service determination or ruling has been received, and cause the return of any Termination Pay Contributions and the earnings thereon to the Participants.

PART 11 EGTRRA SUNSET

5.18.470. EGTRRA Sunset Provisions.

If the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), sunset, the corresponding provisions of the Plan shall be interpreted to incorporate the provisions of the Code without regard to EGTRRA; such provisions include: Section 5.18.110.B (Code section 415 limits); Section 5.18.220 (Rollover provisions) and such other provisions that the Administrative Committee determines must be interpreted to reflect the sunset of relevant EGTRRA provisions.

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